Middle District of Alabama

IN BRIEF

Process summary

Magistrate judge settlement conferences. In the Middle District of Alabama, almost all civil cases are eligible for voluntary settlement assistance with one of the district's three magistrate judges. Under the court's settlement program, the assigned district judge discusses the voluntary settlement option with counsel late in the pretrial period or earlier if appropriate. If all counsel consent, the case is referred to one of three magistrate judges. Before the session, counsel submit position papers and records supporting damage claims. Parties with settlement authority are required to attend.

At the session, the magistrate judge frequently offers an evaluation of the case or gives a decision. The sessions are confidential, and contact between the magistrate judge and the assigned district judge is prohibited. Sessions generally last between three and eight hours; multiple sessions may be held.

The court's program, which is called mediation by the court, is authorized by the general order implementing the district's CJRA plan, which was effective December 1, 1993. Between January and September 1994, 105 cases were referred to magistrate judge settlement conferences.

Of note

Obligations of counsel. Under the court's pretrial order, counsel are required to discuss settlement and to inform the court of their progress within six weeks of the pretrial order.

Information from court. A statement describing the court's settlement program is attached to the pretrial order.

Plans. The court is considering emphasizing use of ADR earlier in the pretrial period. Use of the summary jury trial is also under consideration.

For more information

John L. Carroll, U.S. Magistrate Judge, 205-223-7540

Northern District of Alabama

IN BRIEF

Process summary

Three-track ADR program. The Northern District of Alabama has established an ADR program under the district's CJRA plan, effective December 1, 1993. See below.

Judicial settlement conferences. All civil cases remain subject to settlement conferences with either a district judge or a magistrate judge.

Of note

Obligations of counsel. Counsel or unrepresented parties must attend a conference

with the court early in the litigation process to determine whether the case is appropriate for adr. Local Rule 16.1(c) also makes ADR a topic for discussion at all Rule 16 conferences. In addition, at the initial meeting of the parties pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26(d), counsel are required to discuss the suitability of the case for ADR and to report the results of those discussions to the court.

Evaluation. The court plans to conduct a formal evaluation of the ADR program. Currently, the program is being monitored closely and feedback is being sought informally from all participants.

For more information

Edwin L. Nelson, U. S.Di strict Judge, 205-731-1720
Ethel Self, Supervisor, Courtroom Operations, 205-731-1217

IN DEPTH

Three-Track ADR Program in Alabama Northern

Overview

Description and authorization. The Northern District of Alabama established an ADR program under the district's CJRA plan, effective December 1, 1993. The program, which became fully operational in April 1994, offers litigants three primary ADR options or tracks—mediation, med-arb, and use of any private or court-sponsored dispute resolution method agreed to by the parties and approved by the assigned judge. Under the program, called the Three-Track ADR Program, counsel or unrepresented litigants must attend a conference with the court early in the litigation process to determine whether the case is appropriate for any kind of ADR. Unless specifically excluded by the court or by the assigned judge, all categories of cases may be considered for referral. Ordinarily, the court will not refer a case to ADR if any party objects. A court panel of trained, nonjudicial neutrals provides the mediation and med-arb services for fees paid by the litigants. Pro bono service is also provided for low-income litigants. If litigants choose private ADR, they select a private ADR provider.

On the Mediation Track, the most popular ADR process in the district to date, litigants meet with a mediator selected by the litigants or appointed by the court. The neutral may be, but is not required to be, an expert in the subject area of the dispute. The mediator facilitates in-depth settlement discussions among litigants to identify underlying issues and develop a settlement package.

The Mediation-Arbitration Track (Med/Arb) combines mediation and some features of arbitration. On this track, a dispute is first submitted to mediation. If the parties are unable to reach a mediated agreement, the neutral proceeds to the arbitration phase. During the arbitration phase, parties may present witnesses, documents, and other exhibits, and they may make oral presentations summarizing the facts and law. Based on these presentations, the neutral issues a nonbinding decision on the merits. The primary purpose of the med/arb track is to provide parties with an appraisal of the case's likely outcome at trial or in binding arbitration.

Under the flexible Open Track, parties may use any other form of ADR, either court-sponsored or private, with the approval of the assigned judge. The court hopes that the Open Track option will encourage litigants to explore any private or court ADR process

suited to the case. A single ADR process or combination of ADR processes may be requested or crafted. The court will approve use of the summary jury trial in appropriate cases and if the parties request it.

Number of cases. Between April and December 1994, approximately 100 cases were referred to ADR. With few exceptions, referrals were to the mediation track.

Case selection

Eligibility of cases. All civil cases are eligible for ADR, except categories of cases expressly excluded by the court as a whole or by an individual judge for cases assigned to that judge. To date, no category of cases has been excluded by the court from the ADR process, but individual judges have excluded some cases or categories of cases assigned to them.

Referral method. After consulting with the parties during the Rule 16 scheduling conference or at a special ADR evaluation conference called for that purpose, the assigned judge decides whether ADR should be used in the case. Ordinarily, the court will not refer a case to ADR over the objection of any party.

Opt-out or removal. In any case, a party may move for reconsideration within ten days of an order referring a case to the ADR program.

Scheduling

Referral. An ADR evaluation conference is held early in the case to determine whether ADR is appropriate.

Written submissions. At least ten days before the ADR session, the parties must submit to the neutral copies of relevant pleadings and motions; a short memorandum stating the legal and factual positions of each party; and any other materials the parties believe would be beneficial to the neutral. Upon reviewing these items, the neutral may schedule a preliminary meeting with counsel.

ADR session. The ADR session is held when sufficient discovery has been conducted so the parties understand the strengths and weaknesses of the case or at any earlier time by agreement of the parties and with approval of the court. The ADR plan does not set a time limit for the ADR process, but the judge referring a case to ADR will usually direct that the process be completed within a stated period. The neutral, after consultation with counsel, sets the date for each ADR session. Sessions are held at any location agreeable to the neutral and parties or as otherwise directed by the court.

Number and length of sessions. The information is not yet available.

Program features

Discovery and motions. After referral, other case proceedings are stayed for a period set by the court. If any party makes a motion, the court may for good cause shown extend the stay.

Party roles and sanctions. The attorney primarily responsible for a party's case must attend the ADR session and be prepared and authorized to discuss all relevant issues, including settlement. The parties also must be present. When a party is not an individual or when a party's interests are being represented by an insurance company, a representative of the party or insurance company with full settlement authority must attend. Willful failure of a party to attend is reported by the neutral to the court, which may impose sanctions.

Outcome. When a case is referred to the mediation track, the mediator must report the results of the mediation to the court. If settlement is reached, the mediator, or one of the parties at the mediator's request, must prepare a written statement of the settlement agreement for signing by the parties and filing for court approval. If settlement is not reached, the mediator must report in writing the following: "Mediation was held, but no agreements were reached."

When the referral is to the med/arb track and agreement is reached during the mediation phase, the neutral, or one of the parties at the neutral's request, must prepare a written statement of the settlement agreement for signing by the parties and filing for court approval. If settlement is not reached during mediation and the parties proceed to arbitration, the neutral delivers a written copy of the decision to each party and files a copy with the clerk of court.

De novo request. When a case is referred to the med/arb track and the parties proceed to arbitration and do not agree to binding arbitration, they have thirty days to reject the arbitrator's decision. If it is not accepted and the case proceeds to trial, the rejecting party must obtain a better result at trial or pay to the other party all costs and attorney's fees incurred from the date the arbitrator received the notice rejecting the award.

Confidentiality. All ADR processes offered by the court are confidential. By entering into any of them the parties agree not to disclose anything except the terms of settlement to the court or to third persons unless all parties agree otherwise. Parties, counsel, and neutrals may respond to confidential inquiries or surveys by persons authorized by the court to evaluate the ADR program. Information provided in such inquiries is confidential and is not identified with particular cases.

The ADR processes are considered compromise negotiations for purposes of federal and state rules of evidence. The neutral is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the ADR process.

No record is made during mediation or the mediation phase of med/arb. If the parties choose to present witnesses during the arbitration phase, the neutral may, with party consent, make a stenographic, audio, video, or other recording necessary to reach a fair decision.

Neutrals

Qualifications and training. The court has established a panel of neutrals for the mediation and med/arb tracks. The panel is made up of people who have applied to the court and who, based on their training or experience, are considered by the judges to be qualified to serve as mediators and arbitrators. Any person placed on the panel may be removed for cause at the discretion of the chief judge.

Members of the panel of neutrals are expected to engage in training sufficient to qualify them to act as neutrals and to maintain their skills on a continuing basis. The court, which periodically notifies panel members of educational opportunities, has not established any formal court-sanctioned training program.

Selection for case. When a case is referred to ADR, the parties are first given an opportunity to select a neutral. Within ten days of the court's notice of referral, they must give the court the name of their choice.

If the parties fail to agree on a neutral or fail to notify the court within the ten-day time period, the court sends the parties a list of the names of three proposed neutrals taken from the court's panel of neutrals. Each party then ranks the neutrals in order of preference and, within seven days of the date of the written notice, returns the list to the court. The court then selects one party's list at random, strikes the last name on that list, strikes the last name on the other party's list, and selects the remaining name as the neutral. If there are multiple parties not united in interest, the court adds the name of one proposed neutral for each additional party and then handles the returned lists as described above.

Disqualification. If at any time during the ADR process the neutral becomes aware of, or a party raises, an issue concerning the neutral's impartiality, the neutral must disclose the relevant facts to all parties. If a party believes the neutral is not or cannot remain impartial, the party may request the neutral's withdrawal and the neutral must then withdraw and notify the court. The court will appoint another neutral.

Immunity. The court has not addressed the issue of immunity for ADR neutrals. In the absence of other authority, the court will address the issue on a case-by-case basis.

Fees. The neutral is compensated at a reasonable rate agreed to by the parties or set by the court. The fee is borne equally by the parties unless otherwise agreed by the parties or directed by the court. In an effort to provide ADR services for low-income litigants, the court encourages, but does not require, neutrals to serve without remuneration at least five hours a year.

Program administration

The court's ADR program is administered by a district judge with assistance from the clerk's office.

Southern District of Alabama

IN BRIEF

Process summary

Mediation. In February 1995, the Southern District of Alabama adopted an alternative dispute resolution plan whose principal component is mediation. See below.

Other ADR. In addition to mediation, the court's ADR plan grants litigants broad discretion to use any form of private ADR with court approval. The ADR plan provides that if the parties agree in writing to use arbitration, mediation/arbitration, or minitrial, the court will make its resources available to facilitate these forms of ADR. With the consent of the parties, the court will also approve use of the summary jury trial in appropriate cases.

Judicial settlement conferences. In addition to the ADR plan, parties may request a settlement conference with a judge.

Of note

Evaluation. Under the ADR plan, the clerk of court is directed to create a system for monitoring the impact of the mediation program, including tracking the time from

filing to settlement or trial, assessing the mediator, and studying other features relevant to the merits of the program.

For more information
Deborah S. Hunt, Clerk of Court, 205-690-2371

IN DEPTH

Mediation in Alabama Southern

Overview

Description and authorization. In February 1995, the Southern District of Alabama adopted, by general order, an alternative dispute resolution plan, which authorizes use of any form of ADR agreed to by the parties. The plan also authorizes mediation, which may be used if the parties agree or the judge orders, and sets out detailed rules for this process. Cases are referred to mediation on a case-by-case basis after the assigned judge discusses the case's suitability for mediation with the parties at the initial Rule 16 scheduling conference.

The court's mediation process is designed to help the parties devise better settlements and to improve relationships among litigants. The mediator, who may hold private caucuses with any party or counsel, facilitates discussions among the parties to help them identify underlying issues and develop a settlement. Generally, testimony is not taken during mediation sessions; however, with the consent of the mediator, the parties may produce witnesses to provide additional information. When necessary, the mediator may obtain expert advice concerning technical aspects of the dispute if the parties agree and pay the expert's fee. The parties pay a reasonable fee to the mediator, not to exceed $150 per hour unless the parties agree otherwise. The mediation process is confidential.

Number of cases. This information is not yet available.

Case selection

Eligibility of cases. All civil cases are potentially eligible for mediation. Each judge decides which cases or types of cases should be referred to or excluded from mediation.

Referral method. The ADR plan encourages each judge to evaluate whether a case will benefit from ADR and to decide, after consulting with the parties, whether ADR should be used. If the parties agree to an ADR process, the judge issues an order of referral. If the parties do not request or agree on a form of ADR and the judge believes the case would benefit from ADR, the judge may order the case to mediation.

Opt-out or removal. When the judge refers a case to mediation on his or her own motion, a party may object by filing a request for reconsideration within ten days of the judge's order. Mediation will be stayed pending decision on this request.

Scheduling

Referral. The plan encourages the judge to determine the appropriateness of ADR at the initial Rule 16 scheduling conference and to schedule the ADR session as soon as possible. If a case is considered appropriate for ADR at a later stage in the litigation, the ADR session must occur within thirty days of the close of discovery so as not to delay trial.

Written submissions. At least five days before the mediation conference, the parties must submit the following to the mediator: (1) copies of relevant pleadings and motions; (2) a short, confidential memo stating the legal and factual positions of each party; and (3) any other materials the party believes would assist the mediator. After receiving these items, the mediator may, at his or her discretion or at a party's request, schedule a preliminary meeting with counsel.

Mediation session. The mediator sets the date and time of each mediation session. Sessions may be held at any location agreeable to the parties and mediator.

Number and length of sessions. This information is not yet available.

Program features

Discovery and motions. Proceedings in the case are not automatically stayed by mediation. If a party makes a motion, the court may for good cause stay certain proceedings for a specified time.

Party roles and sanctions. The attorney who is primarily responsible for the case and who is expected to try the case must personally attend the mediation session and must be prepared to discuss all relevant issues, including settlement. The parties must also be present. When the party is not an individual or is being represented by an insurance company, an authorized representative of the party or insurance company must attend, with full authority to settle. The mediator must report to the court failure of a party or representative to attend, and the court may impose sanctions. Persons other than parties and their representatives may attend only with consent of all parties and the mediator.

Outcome. The mediator must report the results of the mediation process to the court as follows: (1) If a settlement is reached, a party prepares a written summary of the agreement; the parties and their representatives sign the summary; and the mediator reports to the court whether a consent order, a stipulation of dismissal, or other document will be filed and by what date. (2) If a settlement is not reached, the mediator reports that a mediation conference was held but that no settlement was reached. The mediator may not comment on the mediation to the court.

Confidentiality. Mediation sessions are private and confidential. The mediator may not disclose to any party any information disclosed by the other party and identified as confidential. The parties are responsible for identifying any documents or communications that should not be revealed to other parties, including documents or other items submitted before the mediation conference.

The parties and mediator may not disclose the settlement terms to the court or any third persons without party agreement. The mediation process is treated as a compromise negotiation under federal and state rules of evidence. Information revealed in mediation and not otherwise known by the opposing party is inadmissible without a specific court ruling, and the mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.

Neutrals

Qualifications and training. Persons selected for the court's panel of neutrals must have the following minimum qualifications: (1) membership in good standing in the Alabama bar and the bar of the district court and at least seven years of law practice, with at

least 50% of that experience in litigation; (2) extensive documented experience as a mediator; (3) experience as a former judge of an Alabama trial court; or (4) experience as a former district, magistrate, or bankruptcy judge in any federal court in Alabama. A law degree is not required but is highly recommended. In addition, candidates must complete a mediation training course by a recognized group specializing in ADR. The training must include instruction in ethical issues relating to ADR. Panelists and others mediating a case under the ADR plan must also agree to be bound by the ADR plan. The court appoints candidates to the panel and may remove any panelist.

Selection for case. Within ten days of the notice of referral the parties must select a mediator and file written notice of their selection. If they cannot agree within this time period, the judge selects the mediator and notifies the parties and the mediator. Parties may select the mediator from the court's panel of neutrals, or they may use a neutral who is not on the panel if the mediator signs an agreement to be bound by the rules of the court's ADR plan.

Disqualification. If at any time during the mediation process, the mediator becomes aware of, or a party raises an issue concerning, the mediator's neutrality, the mediator must disclose to all parties the facts relevant to the issue. If a party believes that the mediator will not be impartial, the party may request that the mediator withdraw. When such a request is made, the mediator must immediately notify the court, who may then appoint another mediator. If the court selects the mediator, the court first determines if the mediator has any conflict of interest regarding any parties in the case and then notifies the parties of the selection.

Immunity. The ADR plan does not address this issue.

Fees. Unless otherwise agreed by the parties or ordered by the court, the parties must bear equally the expenses of the mediator or any witnesses or experts called by the mediator. The mediator is compensated at a rate agreed to by the parties or set by the court. The rate should not exceed $150 per hour unless parties agree otherwise. The fee must be paid within thirty days of receipt of a bill from the mediator and should be paid before disbursement of settlement funds. Parties may petition the court to review a mediator's fee as unreasonable or as deviating from the agreed-on fee, but must do so within ten days of receipt of the bill. To provide mediation to those who cannot afford the cost of ADR, each person serving on the panel must, if requested, serve as a neutral without compensation in at least one case annually.

Program administration

The mediation program is administered by the clerk's office.

District of Alaska

IN BRIEF

Process summary

ADR generally. Based on the CJRA advisory group's conclusion that the district is too small and its resources are too limited to offer an ADR program, the District of Alaska has determined that it will not establish any court-based ADR programs at this time. Settlement assistance is provided through judge-hosted settlement conferences.

Judicial settlement conferences. The judges may require litigants to participate in judge-conducted settlement conferences. Before the settlement conference, the settlement judge usually requires the parties to submit confidential memoranda to the judge stating their opening settlement positions. Counsel are expected to evaluate the case fairly and reasonably and to discuss the case's strengths and weaknesses with the client. If, after a review of the settlement positions, the settlement judge believes there is no reasonable possibility of settlement, the settlement conference is canceled. For example, when counsel differ greatly on the dollar value of a case, the court informs the parties in general terms of this circumstance and states that the settlement conference will be rescheduled when and if the parties are prepared to reevaluate their opening settlement positions.

Of note

Plans. The court will consider ADR again after the Alaska state courts adopt a planned ADR rule.

For more information

H. Russel Holland, U.S. District Judge, 907-271-5621

District of Arizona

IN BRIEF

Process summary

ADR generally. In its CJRA plan, effective December 1, 1993, the District of Arizona states that it "wholeheartedly supports alternative dispute resolution mechanisms" in civil cases and encourages judges and counsel to consider referring appropriate cases to ADR. In addition to the ADR and judicial settlement options noted below, the court authorizes referral of cases to private ADR providers if all parties consent. The court is also experimenting with settlement conferences in criminal cases.

Arbitration. The District of Arizona is one of the ten pilot districts authorized by 28 U.S.C. §§ 651–658 to provide voluntary, nonbinding court-annexed arbitration. See below.

Judicial settlement conferences. District judges commonly refer cases to magistrate judges for settlement conferences. Settlement conferences may also be conducted by

visiting judges or district judges other than the assigned judge. Cases are referred to mandatory settlement conferences by court order.

Of note

Obligations of counsel. The district's standard case management order requires counsel to confer before the initial scheduling conference regarding the case's suitability for referral to arbitration or any other alternative dispute resolution mechanism.

Information from court. At filing counsel are given a handout describing the district's voluntary arbitration program. An ADR brochure is planned.

Plans. The court plans to implement mediation and ENE programs.

Evaluation. A Federal Judicial Center study of the first year of the court's voluntary arbitration program is reported in David Rauma & Carol Krafka, Voluntary Arbitration in Eight Federal District Courts: An Evaluation (Federal Judicial Center 1994). As one of the ten comparison districts established by the CJRA, the court is also included in the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Alycia Wood, CJRA Analyst, 602-514-7067
June Honanie, Arbitration Clerk, 602-514-7102

IN DEPTH

Arbitration in Arizona

Overview

Description and authorization. The District of Arizona is one of the ten pilot districts designated by 28 U.S.C. §§ 651–658 to provide voluntary, nonbinding court-annexed arbitration in cases involving monetary claims of $100,000 or less. It is one of four districts (see also W.D. Pa., M.D. Ga., N.D. Ohio) using an opt-out system. Under the program, which was established in 1992, cases are automatically referred to arbitration after answer is filed, but any party may take the case out of arbitration by filing a Notice of Withdrawal within 21 days of the referral. Arbitration hearings are held within 180 days of filing. A single arbitrator presides and is compensated by the court. The arbitration procedure is described in Local Rule 2.11, which also permits parties to consent to binding arbitration.

Number of cases. Between January and November 1994, 155 cases were referred to arbitration; 29 went into the arbitration process, and the others settled or opted out.

Case selection

Eligibility of cases. Eligible civil cases are those involving money damages only of $100,000 or less, exclusive of interest and costs. The court assumes damages are within this range unless the parties certify otherwise. Cases ineligible for arbitration include civil rights, tax refunds, ADEA, ERISA, Social Security, Title VII, class actions, cases pending on the multidistrict calendar, constitutional claims, prisoner pro se actions, actions seeking injunctive or equitable relief, actions against six or more defendants, and cases assigned to the expedited track under the district's local rule on differentiated case management.

Referral method. Eligible cases are automatically referred to arbitration when all defendants have filed answers or the time for filing answers has expired. If a dispositive motion is filed before the arbitration referral, arbitration proceedings are automatically stayed.

Opt-out or removal. Cases may be exempted from voluntary arbitration in several ways. Any party may opt out of the arbitration program by submitting a notice of withdrawal to the arbitration clerk within twenty-one days of the referral date. Parties may seek to withdraw at a later time for good cause by motion to the arbitrator. Additionally, the assigned judge may exempt a case from arbitration at any time if the matter involves a complex or novel legal issue, if legal issues predominate over factual issues, or for other good cause.

Scheduling

Referral. Cases are referred to arbitration when the answer is filed or the filing time has elapsed, and parties are notified by court order. If a dispositive motion is filed before the arbitration referral, arbitration proceedings are automatically stayed.

Discovery and motions. Discovery is permitted and must be completed within 120 days of the arbitration referral. The arbitrator handles all discovery motions and other case management matters arising after the arbitration referral.

Written submissions. At least ten days before the arbitration hearing, parties must submit to opposing counsel and the arbitrator prehearing statements, listing issues to be determined and all potential witnesses and exhibits. Prehearing briefs may also be filed.

Arbitration hearing. The arbitrator sets the location, time, and date of the hearing. The arbitration clerk advises the parties of the hearing, which must be held within 180 days of filing the answer. Arbitration hearings are usually conducted at the arbitrator's office.

Length of hearing. Hearings generally last no more than one day.

Program features

Party roles. In addition to counsel, parties or party representatives with settlement authority are required to attend the arbitration hearing. Sanctions are authorized under local rule for a party's failure to attend the hearing or to participate in the hearing in a meaningful manner.

Filing of award. The arbitration award and decision are filed with the arbitration clerk under seal. If a trial de novo is not requested, the award is entered as the final judgment. If a de novo request is filed, the award remains sealed, and the docket notes only the date the arbitration award was filed.

De novo request. Parties not satisfied with the arbitration award must file a request for trial de novo within thirty days of the filing of the award. When requesting a trial de novo, the moving party is required to deposit with the arbitration clerk a sum equal to the total fees paid or payable to the arbitrator. The sum is returned if the party obtains a final judgment more favorable than the arbitration award.

Confidentiality. Withdrawals from arbitration are confidential, and the identity of the party opting out does not appear on the docket. Awards are sealed unless accepted by the parties. The sealed arbitrator's award may not be considered by the court or jury before, during, or after the trial de novo.

Neutrals

Qualifications and training. To serve as an arbitrator, attorneys must have practiced law for at least five years, be admitted to the District of Arizona bar, and possess substantial experience in either litigation, neutral practice, or consensual problem solving in complex negotiations. Candidates must also specify their areas of expertise.

Selection for case. A single arbitrator is selected by either the parties or the court. The parties may select an arbitrator from the court's roster of attorneys and former judges, or they may identify an arbitrator from another source. If the parties fail to agree on an arbitrator, the arbitration clerk will select an arbitrator with the desired subject matter expertise from the court roster. Each side may reject one court-selected arbitrator, whereupon the arbitration clerk will select another arbitrator.

No specialized training of the arbitrators is required. The court notes: "This District is fortunate to be situated in a state where arbitration has been in place, with attorneys having considerable experience serving as neutrals in that court system. Several arbitrators are retired judges, now residing in Arizona."

Disqualification. The arbitrator is subject to the disqualification rules set forth in 28 U.S.C. § 455 and may decline to serve for any reason.

Immunity. The court has not addressed this issue.

Fees. The court sets and pays arbitrators a fee of $250 for each case or each day of hearing, whichever is greater. Outside arbitrators selected by the parties are subject to the court's compensation structure.

Program administration

The arbitration program is administered by the clerk's office. Substantive or procedural problems are handled by an advisory committee chaired by a district judge and composed of three counsel, two district judges, and the court clerk.

Eastern District of Arkansas

IN BRIEF

Process summary

ADR generally. The Eastern District of Arkansas has determined that it will not establish court-based ADR programs.

Of note

Obligations of counsel. Attorneys are required to discuss ADR with their clients and opposing counsel and to demonstrate that they have done so. They must also be prepared to discuss with the assigned judge the case's suitability for ADR services provided by the private sector.

Information from court. ADR options available to litigants in the private sector are discussed in the court's general brochure for civil litigants, *Your Day in Court—The Federal Court Experience.*

For more information

James W. McCormack, Clerk of Court, 501-324-5351

Western District of Arkansas

IN BRIEF

Process summary

ADR generally. The Western District of Arkansas has determined that it will not establish any court-based ADR programs but will provide settlement assistance through magistrate judge settlement conferences.

Magistrate judge settlement conferences. The Western District of Arkansas is experimenting with a mandatory settlement conference program in which one of the court's three district judges refers almost all civil cases to magistrate judges for settlement conferences. Cases involving prisoners, student loans, and social security appeals are excluded from referral; cases involving the U.S. government as plaintiff may be excluded by the assigned judge at his or her discretion. Eligible cases are referred to the program automatically through the assigned judge's scheduling order.

The purpose of the settlement conference program is to improve communication between the parties and to provide an evaluation of the case where appropriate. The confidentiality of the sessions are protected by Fed. R. Evid. 408, and the hosting magistrate judge does not discuss any aspect of the settlement proceeding with the referring judge.

Before the settlement conference, which is generally held thirty to sixty days before trial, each party provides the magistrate judge with a concise description of claims, defenses, and trial evidence. The magistrate judge determines the timing of the conference, whether the parties must attend, and whether the conference will be conducted by telephone or in person. Conferences generally take one to two hours, and there may be several follow-up telephone conferences. At the conclusion of the process, the magistrate judge files a report indicating only whether settlement occurred.

No local rules have been enacted for this experimental program. Authorization is provided in each referral order. Approximately ninety cases were referred to magistrate judge settlement conferences between January and September 1994.

Of note

Information from court. The court is preparing a brochure that will identify private ADR resources available to litigants.

For more information

Beverly R. Stites, U.S. Magistrate Judge, 501-783-7045
Bobby E. Shepherd, U.S. Magistrate Judge, 501-863-3173

Central District of California

IN BRIEF

Process summary

Mandatory settlement procedures. The Central District of California has authorized, through Local Rule 23, mandatory referral to settlement procedures for most civil cases. See below.

Other ADR. In the Central District of California, referral to different forms of ADR, such as arbitration, mediation, minitrial, or summary jury trial, is at the discretion of the individual district or magistrate judge. No court-based ADR programs or rules have been established. When a judge refers parties to one of these forms of ADR, the judge sets the procedures for the process. The judges have also appointed special masters to settle cases and have referred some cases to a minitrial procedure. On a few occasions, one judge has held a summary jury trial.

Of note

Obligations of counsel. Attorneys must discuss ADR options with opposing counsel and indicate in their case management statements that they have done so.

Evaluation. As one of the ten comparison districts established by the CJRA, the Central District of California is included in the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

Plans. The court is creating a panel of settlement judges and a panel of attorney settlement officers to serve as neutrals in the court's mandatory settlement procedures.

For more information

William J. Rea, U.S. District Judge, 213-894-0466
Harry L. Hupp, U.S. District Judge, 213-894-6730

IN DEPTH

Mandatory Settlement Procedures in California Central

Overview

Description and authorization. Under Local Rule 23, the Central District of California has established a variety of procedures to assist settlement. The court's procedures were first adopted in 1993 and were modified by an amendment to Local Rule 23 in November 1994. Known as the Mandatory Settlement Procedures Program, it is not yet fully implemented.

When the program is fully operational, it will require litigants in all civil cases to meet with the trial judge, another district judge, a magistrate judge, an attorney settlement officer, or a private mediator to pursue settlement at least forty-five days before the final pretrial conference. Parties will be required to select one of the court's settlement options. If they cannot agree on a process, the assigned district or magistrate judge is authorized to conduct an appropriate settlement process. The court's three options include (1) participation in a settlement process hosted by a settlement attorney on the court's roster; (2) referral to a retired judge or other private ADR neutral; or (3) referral

to another district judge or a magistrate judge for settlement. The selected settlement officer has broad discretion to structure the settlement process. Under the rule, the settlement officer may (1) require an opening statement from each counsel; (2) hold, with agreement of the parties, a summary jury trial or minitrial; may require presentation of testimony or summary of testimony of expert witnesses; (3) order closing argument by each counsel; or (4) require any combination of these. Any case may be excluded from the program by the assigned judge.

Number of cases. No information is yet available on the number of cases referred.

Case selection

Eligibility of cases. All civil cases are eligible. A case may be excluded from the program by the assigned district or magistrate judge.

Referral method. No later than forty-five days before the final pretrial conference, the parties must select and participate in one of the court's approved settlement procedures. If parties do not select a settlement option, the court may order the parties to participate in any of the settlement procedures set forth in Local Rule 23.

Opt-out or removal. The assigned judge may, if a party applies or sua sponte, excuse the case from participation in a settlement procedure.

Scheduling

Process selection. Parties who have not chosen the assigned judge to preside over their settlement proceedings must file a Notice of Selection of Settlement Procedure, signed by counsel for each side, no later than fourteen days before the date of the selected settlement procedure. The notice must state the settlement procedure selected, the name of the settlement officer, and the date, time, and place of the settlement procedure.

Written submissions. At least five days before the settlement procedure, each party must submit to the settlement officer, in camera, a letter of five pages or less setting forth its statement of the case; its settlement position (including the last offer or demand made), and the offer or demand it will make at the settlement conference. The letter is returned to the party at the end of the settlement conference.

Settlement session. The settlement conference must take place no later than forty-five days before the final pretrial conference.

Number and length of sessions. No data are currently available about the length of settlement sessions or the number of sessions generally held.

Program features

Rule 23 settlement procedures. Four settlement procedures are offered under Local Rule 23:

Settlement procedure no. 1. Unless another settlement procedure is selected by the parties with the consent of the trial judge, the parties must appear before the assigned district or magistrate judge for any settlement procedures the judge may conduct.

Settlement procedure no. 2. The parties may engage in settlement discussions with an attorney selected from the Attorney Settlement Officer Panel (when established and functioning) or with an attorney appointed by the trial judge.

Settlement procedure no. 3. The parties may appear before a retired judge or other private or nonprofit dispute resolution body for "mediation-type settlement proceedings."

Settlement procedure no. 4. With the consent of the trial judge, the parties may ap-

pear for settlement proceedings before another district or magistrate judge selected at random from the Civil Settlement Panel.

Discovery and motions. Local Rule 23 does not address this subject.

Party roles and sanctions. In addition to the attorney who will try the case, each party must attend the settlement proceeding in person or be represented by a person with full authority to settle. Parties residing outside the district may have an authorized representative available by telephone during the proceeding. Each party must analyze the case before the proceeding and must be prepared to discuss all economic and non-economic factors relevant to settlement. Local Rule 23 does not specify whether or what type of sanctions might be imposed for failure to comply with the attendance and other requirements.

Outcome. If settlement is reached, the parties must report it immediately to the assigned judge's courtroom deputy and submit a written settlement agreement as soon as possible.

Confidentiality. All proceedings are confidential. No statements made during the settlement procedures are admissible in any subsequent proceeding in the case unless the parties agree. No part of the proceeding may be reported or recorded without consent of the parties, except for the written settlement agreement.

Neutrals

Qualifications and training. Local Rule 23 does not address this subject.

Selection for case. When parties choose to proceed before an attorney, they may select the attorney from the Attorney Settlement Officer Panel (when established and functioning) or before an attorney appointed by the trial judge for settlement proceedings. If the neutral is a district or magistrate judge other than the assigned judges, the settlement judge is selected at random from the Civil Settlement Panel.

Disqualification. Local Rule 23 does not address this subject.

Immunity. Local Rule 23 does not address this subject.

Fees. Local Rule 23 does not address this subject.

Program administration

No administrative structure has been established to date.

Eastern District of California

IN BRIEF

Overview

Early neutral evaluation (ENE). Based on a pilot program in early neutral evaluation, the Eastern District of California formally amended its local rules, effective December 19, 1994, to establish court-based procedures for voluntary referral of civil cases to a nonbinding neutral-evaluator. See below.

Early settlement conferences. All district and magistrate judges are available to conduct settlement conferences as early as practicable in the case.

Of note

Information from court. The court notifies plaintiffs of the early neutral evaluation program at filing. Plaintiffs must provide copies of the notice to all other parties involved in the action.

For more information

R. Lynette Groff, Sacramento Division, 916-498-5468
Marianne Matherly, Fresno Division, 209-487-5757

IN DEPTH

Early Neutral Evaluation in California Eastern

Overview

Description and authorization. After several years of experimentation with ENE, the Eastern District of California amended Local Rule 252 on December 19, 1994, to establish a voluntary, nonbinding ENE program. Most civil case types are eligible, but participation requires party consent. An ENE evaluator is appointed to bring the parties in a civil action together in an informal setting and to offer impartial guidance by (1) allowing each party to state its position, (2) identifying areas of agreement and thereby narrowing the focus to issues of nonagreement, (3) assisting the parties in identifying the strengths and weaknesses of their positions, (4) planning discovery, (5) providing a realistic assessment of legal costs, and (6) effecting resolution of as many issues as possible before proceeding to trial. The neutral-evaluators serve without compensation.

Number of cases. In early 1995, fifty-five cases were referred to the ENE process.

Case selection

Eligibility of cases. Most civil cases are eligible for referral to ENE, except for the following: prisoner petitions; cases in which one of the parties is appearing pro se; voting rights cases; Social Security cases; deportation cases; Freedom of Information Act cases; and cases involving the constitutionality of federal, state, or local statutes or ordinances.

Referral method. Parties voluntarily elect early neutral evaluation by filing a stipulation with the court indicating that all parties agree to proceed under Local Rule 252. When the stipulation is received, the court issues an order referring the case to ENE.

Opt-out or removal. No procedure is necessary, as participation in ENE is strictly voluntary.

Scheduling

Referral. At the initial status conference, the court informs all parties of the availability of ENE. Parties may then file a stipulation for early neutral evaluation.

Written submissions. At least seven days before the evaluation session, each party must submit to the evaluator and all other parties a written evaluation statement of ten pages or less. The statement must (1) briefly list the facts and pertinent principles of law; (2) identify significant disputed issues; (3) identify issues whose early resolution may reduce the scope of the dispute or contribute significantly to the productivity of settlement discussions; and (4) identify the people, in addition to counsel, who will

attend the session with decision-making authority. Documents or other physical evidence may also be identified or attached.

ENE session. Unless the court directs otherwise, the first ENE session must be held as soon as possible after the evaluator is appointed and no more than ninety days after the appointment. The evaluator selects the location, date, and time for the initial session.

Number and length of sessions. Most ENE actions are resolved at the initial session. The evaluator determines if follow-up sessions or procedures are needed.

Program features

Discovery and motions. Typically, the ENE process is invoked before the start of discovery and motion practice.

Party roles and sanctions. The attorney who will be primarily responsible for the trial must attend the ENE session. Parties or party representatives with settlement authority must also attend. If there is insurance coverage, an adjuster with reasonable settlement authority may attend. Governmental entities must be represented by an attorney with authority to settle or recommend settlement. Local Rule 252 does not specify whether or what type of sanctions may be imposed for failure to comply with the attendance and other requirements.

Outcome. Within thirty days of the ENE session, the evaluator must report in writing to the ENE program administrator the outcome of the session and whether any follow-up sessions or procedures are still to be completed.

Confidentiality. All written and oral communications made during any ENE session are confidential and are governed by Fed. R. Evid. 408.

Neutrals

Qualifications and training. The clerk is responsible for maintaining a panel of qualified evaluators who are experienced civil litigators familiar with practice in federal court. The panel initially consisted of evaluators who were selected to participate in the ENE pilot project. The chief judge may select additional members who want to serve. Evaluators may ask to be dropped from the panel for a specified period of time or permanently.

Selection for case. Once a stipulation for early neutral evaluation is filed, the court appoints an evaluator from a panel maintained by the clerk's office. All parties are notified of the appointment.

Disqualification. No person may serve as an evaluator in any action where a conflict of interest exists or is believed to exist. If a party believes that an assigned evaluator has a conflict of interest and does not bring the concern to the attention of the clerk within ten days of learning of the conflict, the party waives any objection based on that conflict.

Immunity. The court has not addressed this issue.

Fees. Evaluators receive no compensation for their service.

Program administration

The clerk is responsible for administering the court's ENE program.

Northern District of California

IN BRIEF

Process summary

ADR multi-option program. On July 1, 1993, the Northern District of California established the ADR Multi-Option Program in partial fulfillment of its responsibilities as a demonstration district under the Civil Justice Reform Act. Under the Multi-Option Program, which is authorized by ADR Local Rule 3, litigants in certain civil case types assigned to four pilot program judges are presumptively required to participate in one of the court's nonbinding ADR processes (listed below). In lieu of a court-connected process, litigants may substitute a similar process offered by a private provider. Through this experiment the court hopes to assess the potential of various ADR processes for different types of cases. See below.

Arbitration. The Northern District of California is one of ten federal district courts authorized by 28 U.S.C. §§ 651–658 to establish a mandatory, nonbinding court-annexed arbitration program. See below.

Mediation. The Northern District of California has established an experimental mediation program as part of the Multi-Option Program. See below.

Early neutral evaluation (ENE). The Northern District of California authorizes automatic referral, at filing, of specified case types to early neutral evaluation. See below.

Other ADR. The assigned judge may appoint a special master. Additional forms of ADR, such as the summary jury trial, are offered as part of the Multi-Option Program but are seldom chosen. In lieu of a court-connected process, litigants subject to the Multi-Option Program may select an ADR process offered by a private provider. Between January and September 1994, parties in seventeen cases selected a private ADR provider.

Early magistrate judge settlement conference. Under the Multi-Option Program, participating litigants may choose an early magistrate judge settlement conference to fulfill the court's ADR requirements. Between January and September 1994, seventy-six cases were referred to an early magistrate judge settlement conference.

Judicial settlement conferences. A significant number of cases are referred by the district judges for settlement conferences at later stages of the litigation. The referrals are generally to the magistrate judges.

Of note

Obligations of counsel. In cases subject to the Multi-Option Program, counsel are required to discuss the ADR options for the case and, if possible, stipulate to an ADR process. In all cases, the filing party is required to serve on all other parties the court's brochure, *Dispute Resolution Procedures in the Northern District of California.* Each party in all civil cases except those exempted by Local Rule 16 must file, but need not serve on other parties, a certification of discussion and consideration of ADR options. The certification, signed by both client and counsel, indicates that they have read the court's brochure, discussed the available court-connected and private ADR options, and considered whether their case might benefit from any of them.

Information from court. The court provides the brochure *Dispute Resolution Procedures in the Northern District of California.*

Evaluation. An evaluation of the court's arbitration program is reported in Barbara Meierhoefer, Court-Annexed Arbitration in Ten District Courts (Federal Judicial Center 1990). An evaluation of the ENE program is reported in J. Rosenberg & H. J. Folberg, *Alternative Dispute Resolution: An Empirical Analysis,* 46 Stanford L. Rev. 1487 (July 1994). As a demonstration district under the CJRA, the court's ADR Multi-Option Program is included in the Federal Judicial Center's study of the five CJRA demonstration districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Carroll DeAndreis, Administrative Assistant, ADR Programs, 415-556-3167

IN DEPTH

ADR Multi-Option Program in California Northern

Overview

Description and authorization. On July 1, 1993, the Northern District of California established the ADR Multi-Option Program in partial fulfillment of its responsibilities as a demonstration district under the Civil Justice Reform Act. Initially, five judges participated in the experimental program; since one has left the bench, four now participate. They are Chief Judge Thelton E. Henderson and Judges Marilyn Hall Patel, Fern M. Smith, and Vaughn R. Walker.

Under the ADR Multi-Option Program, which is authorized by ADR Local Rule 3, litigants in certain civil case types are presumptively required to participate in one nonbinding process offered by the court, including mediation, arbitration, early neutral evaluation, or early magistrate judge settlement conference. In lieu of a court-connected process, litigants may substitute a similar process offered by a private provider. Selection of an ADR process is made during a conference call between counsel and the court's ADR director or deputy director, unless parties previously stipulate to a procedure or cannot agree and postpone further discussion of ADR options until the initial case management conference with the assigned judge.

Number of cases. For a summary of the number of cases that have selected arbitration, early neutral evaluation, and mediation, see the following descriptions. Between January and September 1994, seventy-six cases were referred to an early settlement conference with a magistrate judge and seventeen cases were referred to a private ADR provider.

Case selection

Eligibility of cases. Eligible cases include most civil cases that are assigned to the four participating judges and are subject to the court's case management procedures (see Local Rule 16). Cases presumptively excluded from the Multi-Option Program are those set out in Local Rule 16 and include bankruptcy appeals, actions for review of federal agency decisions, prisoner civil rights cases, habeas corpus petitions, pro se cases, reinstated or reopened cases, forfeiture actions, and tax suits.

Referral method. All cases eligible for the Multi-Option Program are presumptively required to participate in one nonbinding ADR process. Cases are designated at filing by

an order issued by the clerk to the filing party and served by the filing party on the defendant. Counsel in the designated cases must stipulate to a specific ADR procedure or participate in a joint telephone conference call with the ADR director or deputy director to discuss the suitability of the ADR options for their case. The designation order specifies the date and time of the conference call, which is held between 95 and 105 days after the complaint is filed. Counsel primarily responsible for the case must participate, and clients and their insurance carriers are strongly encouraged to participate.

If parties agree on an ADR process before the conference call, the call is not held, and the parties file a stipulation and order selecting an ADR process. Parties who agree to an ADR process after the conference call may file the form stipulation or include their ADR stipulation in their case management statement.

If the parties do not agree on an ADR process before the case management conference required by Local Rule 16, the judge discusses the ADR options at that conference. If by the end of the conference the parties cannot agree on a process, the judge selects one, unless persuaded that no ADR process will be beneficial or cost-effective. If an ADR process is selected, the judge issues a referral order.

To assist parties in selecting an ADR process, the court provides to the filing party the brochure, *Dispute Resolution Procedures in the Northern District of California*.

Opt-out or removal. To seek exemption from the telephone conference call, counsel may file a motion with the assigned judge. Although there is a presumption of ADR use in cases assigned to the Multi-Option Program, counsel may seek by motion or at the case management conference to persuade the judge that it would be inappropriate.

Scheduling

Selection of an ADR process. Parties may agree on an ADR process at any time before the case management conference. If they do not agree before the case management conference, the decision is made at the conference. The judge may also defer the ADR decision to a later point in the case.

Written submissions. See the following descriptions for arbitration, mediation, and early neutral evaluation.

ADR session. See the following descriptions for arbitration, mediation, and early neutral evaluation.

Number and length of sessions. See the following descriptions for arbitration, mediation, and early neutral evaluation.

Program features

Discovery and motions. Cases referred to ADR under the Multi-Option Program remain subject to the court's local rules and general orders, including the court's case management requirements (Local Rule 16), as well as each judge's standing orders.

Party roles and sanctions. See the following descriptions for arbitration, mediation, and early neutral evaluation.

Outcome. See the following descriptions for arbitration, mediation, and early neutral evaluation.

Confidentiality. See the following descriptions for arbitration, mediation, and early neutral evaluation.

Neutrals

See the following descriptions for arbitration, mediation, and early neutral evaluation.

Program administration

Administrative matters related to the Multi-Option Program are managed by the director, deputy director, and administrative assistant of the court's Office of ADR Programs. Administration includes scheduling and conducting the telephone conference calls with counsel, sending memoranda reports on these calls to the assigned judges, assigning neutrals to cases referred to an ADR process, and selecting and training neutrals for the court's roster. A magistrate judge serves as liaison judge for the court's ADR programs.

Arbitration in California Northern

Overview

Description and authorization. The Northern District of California is one of ten courts authorized by 28 U.S.C. §§ 651–658 to establish a mandatory, nonbinding court-annexed arbitration program. The court's procedures are spelled out in ADR Local Rule 4, which was first adopted in 1978 as Local Rule 500. Before the court adopted its Multi-Option Program on July 1, 1993, all cases meeting the eligibility criteria were automatically referred to arbitration. Under the Multi-Option Program, the civil cases of four judges are now subject to procedures established by the program and are exempt from Rule 4's automatic referral at filing. Of cases not in the Multi-Option Program, specified case types seeking only money damages of $150,000 or less are automatically assigned to arbitration at filing. Parties in cases with higher damages or nonmonetary damages may jointly request referral to arbitration. The parties determine whether the arbitration hearing will be conducted by one or three arbitrators, chosen from a list of ten arbitrators randomly selected by the court from its roster of attorneys trained by the court. The court pays the arbitrators $250 per day if serving singly and $150 per day if serving on a panel of three.

Number of cases. Between January and September 1994, 246 cases were referred to arbitration under Rule 4. An additional 6 cases were referred to arbitration under the Multi-Option Program.

Case selection

Eligibility of cases. All civil cases not assigned to the Multi-Option judges that fall within the following categories are automatically assigned to arbitration: (1) actions in which the United States is not a party that seek relief limited to money damages not exceeding $150,000 (exclusive of any punitive or exemplary award and interest and costs), and that are founded on diversity of citizenship or admiralty or maritime jurisdiction and arise under a contract or out of personal injury or property damage; (2) actions in which the United States is a party that seek relief limited to money damages not exceeding $150,000, and that arise under the Federal Tort Claims Act or the Longshoremen's and Harbor Workers Act or under the Suits in Admiralty Act and involve no general average; or (3) actions that arise under the Miller Act, in which the United States has no monetary interest, and that seek relief limited to money damages not exceeding $150,000 (exclusive of any punitive or exemplary award and interest and costs). Parties in other cases,

regardless of the amount in controversy, may jointly request submission to arbitration. If approved by the assigned judge, the case proceeds under the procedures outlined in ADR Rule 4. Parties who believe the amount in controversy exceeds $150,000 must file certification to this effect within thirty days of the initial docketing of the case. Failure to do so waives the right to object to submission of the case to arbitration on the grounds that the case exceeds the monetary ceiling. Case types not falling in the categories above are exempt from arbitration, unless the parties agree to submit the case to arbitration.

Referral method. Every action subject to ADR Rule 4 is referred to arbitration by the clerk once the complaint or notice of removal is filed. The court's Order Re Court Procedures notifies the filing party of the referral; this party then serves the order on other parties. A case not referred at filing but that otherwise meets the referral criteria may be referred by order of the assigned judge following stipulation by all parties, motion by a party, or on the judge's initiative. Cases not meeting the referral criteria may be referred only if all parties consent.

Opt-out or removal. Within twenty days of the filing of the last responsive pleading, any party may move for removal from arbitration by demonstrating that the case involves novel or complex legal issues or significant and complex factual issues, that legal issues predominate over factual issues, or other grounds for finding good cause.

Scheduling

Referral. Eligible cases are referred to arbitration when the complaint or notice of removal is filed.

Discovery and motions. Every action subject to ADR Rule 4 is assigned to a judge upon filing, and the judge has authority to conduct status and settlement conferences, hear motions, and in all other respects supervise the case in accordance with the court's rules notwithstanding the referral to arbitration. Parties may serve discovery requests within thirty days of serving the complaint, notwithstanding Local Rule 16's temporary stay of discovery. Discovery must be completed twenty days before the arbitration hearing.

Written submissions. No later than ten calendar days before the arbitration session, parties must give the arbitrator and other parties a written arbitration statement that summarizes the claims and defenses, identifies contested issues and proposed witnesses, and identifies the person with decision-making authority who will attend.

Optional telephone conference. The arbitrator may conduct a brief joint telephone conference with counsel before the hearing to discuss matters such as hearing procedures, supplemental written materials, witnesses, and presentation of testimony.

Arbitration hearing. Case systems administrators in the clerk's office set the hearing date. The hearing must take place within 20 to 120 days after the arbitrators are selected. No arbitration hearing may begin until 30 days after disposition by the court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, provided such motion was filed and served within 30 days of the filing of the last responsive pleading. Arbitration hearings may be held anywhere within the district designated by the arbitrator, including the courthouse.

Length of hearing. Although the length of arbitration hearings depends on the case, they generally take no more than one day.

Program features

Party roles and sanctions. Each party and its lead trial counsel must attend the hearing. A corporate or government party may be represented by someone knowledgeable about the facts of the case. A party may be excused from personal attendance by showing extraordinary hardship in a letter submitted at least fifteen days before the hearing to the ADR magistrate judge, but the excused party must participate by telephone. Violation of the attendance requirement or any other requirement of ADR Rule 4 must be reported to the ADR magistrate judge, who will determine whether sanctions should be imposed.

Nature of the hearing. All testimony is given under oath, and each party may cross-examine witnesses. The arbitrator is guided by the Federal Rules of Evidence but is not precluded from receiving privileged evidence or evidence he or she considers relevant.

Filing of award. The arbitrator must file the award with the clerk's office within ten days of the hearing. The award is filed under seal and is forwarded to the assigned judge. The clerk serves copies on the parties. Unless a party files a request for trial de novo, the clerk enters judgment on the arbitration award.

De novo request. A request for trial de novo must be filed within thirty days of filing the arbitration award. No fees are assessed against parties who request trial de novo but do not improve their position by trial.

Confidentiality. The arbitration award may not be made known to any judge who might preside at trial or rule on dispositive motions until the court has entered final judgment or the action has otherwise been terminated. The award may also be made known to those who prepare the report required by § 903(b) of the Judicial Improvements and Access to Justice Act. No transcript, record, or award is admissible as evidence in a trial de novo or any subsequent proceeding unless the evidence is otherwise admissible or the parties stipulate, and the parties may not reveal at trial any evidence of or concerning the arbitration. There may be no ex parte communication between an arbitrator and any counsel or party on any matter touching on the action except for purposes of scheduling the hearing.

Neutrals

Qualifications and training. The clerk maintains a roster of arbitrators who hear actions referred under ADR Rule 4. To be eligible for selection for the roster an attorney (1) must have been admitted to practice for at least ten years, (2) must be a member of the bar of the court, and (3) must, for at least five years, have committed 50% of his or her professional time to litigation or have had substantial experience as a neutral in dispute resolution proceedings. Each person selected for the roster must successfully complete the training conducted by the court, which gives the history and purpose of the arbitration program and requires participation in role-play scenarios that focus mainly on difficult procedural and ethical issues that may arise in arbitration.

Selection for case. Promptly after the last responsive pleading is filed, the clerk's office provides the parties a list of ten arbitrators randomly drawn from the court's roster. The parties then confer to determine whether to select a single arbitrator or to request, in writing, that they be permitted to select three. Through a process of strikes (described in ADR Rule 4), the parties select the arbitrator(s) and then submit the name(s) to the clerk within ten days of receipt of the original list. If they do not, the clerk randomly selects the arbitrator(s) from the list.

Disqualification. No person may serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or in good faith are believed to exist. A party who believes the neutral has a conflict of interest must object in writing within ten days of learning of the possible conflict or objection is waived.

Immunity. ADR Rule 2 specifies that arbitrators perform quasi-judicial functions and are entitled to the immunities and protections accorded to such persons by law.

Fees. The court pays arbitrators $250 per day or portion of a day for serving as a single arbitrator or $150 per day or portion of a day for serving on a panel of three.

Program administration

Administrative matters related to arbitration are managed by the director, deputy director, and administrative assistant of the court's Office of ADR Programs. Their duties include recruiting and training arbitrators, assisting arbitrators with ethical or procedural issues, and debriefing arbitrators after their sessions. Day-to-day management, including sending notices to parties, generating the lists of arbitrators from which parties may choose, coordinating dates, docketing all arbitration events, and tracking the progress of the arbitration cases, is handled by the case systems administrators in the clerk's office.

Mediation in California Northern

Overview

Description and authorization. Under ADR Rule 6, the Northern District of California provides a mediation program as one component of the court's Multi-Option Program. The mediation program became effective July 1, 1993. The four judges participating in the Multi-Option Program offer mediation as one of several ADR options. Except for certain case types specified in Local Rule 16, all civil cases assigned to these judges and subject to the court's case management procedures are eligible for mediation. If appropriate resources are available, mediation is provided to litigants in other cases who agree to the procedure.

In the mediation process, a neutral attorney-mediator, trained in communication and negotiation techniques and knowledgeable about federal litigation, helps counsel and their clients improve communication, clarify their understanding of their own and opponent's case, probe weaknesses in each party's legal position, identify areas of agreement, and explore settlement alternatives. The mediator may hold private caucuses with the parties but generally does not give an evaluation of the case. The first four hours of mediation are free. Parties and the mediator must then decide whether the mediator will continue to volunteer his or her time or whether the parties will jointly pay an hourly fee of $150 to continue the procedure. The parties and mediator may agree on appropriate follow-up to the mediation session, such as exchange of information or additional sessions.

Number of cases. The mediation program is experimental and limited to four judges. Between January and September 1994, sixty-seven cases were referred to mediation under the Multi-Option Program, and another sixteen cases agreed to the procedure.

Case selection

Eligibility of cases. Most civil cases assigned to the four Multi-Option Program judges

and subject to Local Rule 16 are eligible for referral to mediation. If appropriate resources are available, mediation is available to litigants in other cases. Cases presumptively excluded from the mediation process include transferred cases, cases filed by pro se plaintiffs, cases remanded from appellate court, reinstated and reopened cases, and cases in the following categories: prisoner petitions, forfeiture/penalty, bankruptcy, Social Security, and other statutes enumerated in Local Rule 16. The four Multi-Option Program judges as well as other judges may select for referral cases other than those formally designated as eligible.

Referral method. All cases assigned to the Multi-Option Program are presumptively required to participate in one nonbinding ADR process. Cases are designated at filing by an order issued by the clerk to the filing party and served by the filing party on the defendant. Counsel in the designated cases must stipulate to a specific ADR procedure or participate in a joint telephone conference call with the ADR director or deputy director to discuss the suitability of the ADR options for their case. The designation order specifies the date and time of the conference call, which is held between 95 and 105 days after the complaint is filed. Counsel primarily responsible for the case must participate, and clients and their insurance carriers are strongly encouraged to do so.

If parties stipulate to an ADR process before the conference call, the call is not held, and the parties file a stipulation and order selecting an ADR process. Parties who stipulate after the conference call may do so in their case management statement.

If the litigants do not agree to an ADR process before the case management conference required by Local Rule 16, the judge discusses the ADR options at that conference. If by the end of the conference the parties cannot agree on a process, the judge selects one, unless persuaded that no ADR process will be beneficial or cost-effective. If an ADR process is selected, the judge issues an order referring the case.

Cases not assigned to the Multi-Option Program may be referred to mediation by order of the assigned judge following stipulation by all parties, motion by a party, or on the judge's initiative.

To assist parties in selecting an ADR process, the court provides a brochure, *Dispute Resolution Procedures in the Northern District of California*, which the clerk gives to the filing party along with the notice designating the case as a Multi-Option case.

Opt-out or removal. To seek exemption from the conference call or from a referral to ADR, counsel may file a motion with the assigned judge.

Scheduling

Referral. Parties may stipulate to mediation at any time before the case management conference. If they do not stipulate before the conference, the decision is made at the conference.

Written submissions. At least ten days before the first mediation session, each party must submit to the mediator and serve on all parties a written mediation statement of ten pages or less. The statement, which is not filed or transmitted to the assigned judge, must (1) identify those with decision-making authority who will attend the sessions, (2) describe the suit, setting forth the party's views on the key liability issues and damages, (3) identify others whose presence might substantially improve the prospects for settlement, (4) indicate the status of settlement negotiations and other information that might be helpful to the mediator, (5) identify discovery or motions that would contribute to

meaningful settlement negotiations, and (6) include copies of documents that might advance the settlement process.

Mediation session. Promptly after appointment to a case, the mediator sets the date and place of the mediation session, within time frames set by the ADR order. The mediator also schedules a telephone conference with counsel to discuss such matters as scheduling, procedures to be followed, and client attendance. Unless otherwise ordered, mediation sessions must be conducted within ninety days of the first case management conference or issuance of the case management order, whichever comes first. Requests to extend the deadline must be submitted by motion to the assigned judge at least fifteen days before the session is to be held.

Number and length of sessions. This information is not yet available.

Program features

Discovery and motions. Cases referred to mediation remain subject to the court's local rules and general orders, including the requirements of Local Rule 16 and each judge's standing orders.

Party roles and sanctions. Parties and their counsel must attend all mediation conferences. A party other than a natural person (e.g., a corporation or insurance company) satisfies this requirement if represented by a person other than outside counsel who has full settlement authority and knowledge about the facts of the case. Governmental entities must send a representative knowledgeable about the facts of the case and the government's position. At least fifteen days before the mediation session, a party may ask by letter to the ADR magistrate judge to be excused from attendance because of extraordinary hardship. An excused party must be available by telephone. Mediators must report any violation of the mediation order to the ADR magistrate judge, including failure to comply with the attendance requirements. The magistrate judge will determine whether sanctions should be imposed.

Outcome. Within ten days of the mediation session, on a form provided by the court, the mediator must report to the ADR director whether the mediation resulted in full or partial settlement, whether any follow-up is scheduled, and any stipulations the parties agreed to disclose.

Confidentiality. The court, the mediator, all counsel, and all parties must treat as confidential all written and oral communications made in connection with or during any mediation session. All communications are protected by Fed. R. Evid. 408 and Fed. R. Civ. P. 68. Absent stipulation by the parties and mediator, no written or oral communication made by any party, attorney, or other participant may be disclosed to anyone not involved in the litigation or used for any purpose in pending or future proceedings in this court. None of the substance of the mediation may be communicated by anyone to the assigned judge. The mediator may ask the parties and all those attending the session to sign a confidentiality agreement.

Neutrals

Qualifications and training. Mediators must be admitted to the practice of law for at least seven years and be a member of the California bar or of the faculty of an accredited law school. Additionally, mediators on the court roster must have strong mediation process skills and training to listen well and facilitate communication.

Selection for case. After entry of an order referring the case to mediation, the ADR

office appoints a mediator from the court's roster and notifies the parties of the appointment.

The court conducts a two-day mediation training program for applicants to its roster. The training includes participation in role-play scenarios, observation of segments of a mediation session, and discussion of ethical and administrative requirements. Training must be successfully completed before appointment to the roster.

Disqualification. No mediator may serve in violation of the standards set forth in 28 U.S.C. § 455. If a circumstance covered by § 455 might exist, the mediator must promptly notify the parties. A party who believes that the assigned mediator has a conflict of interest must bring it to the attention of the ADR director, in writing, within ten calendar days of learning the source of the potential conflict or is deemed to have waived objection.

Immunity. ADR Rule 2 specifies that mediators perform quasi-judicial functions and are entitled to the immunities and protections accorded to such persons by law.

Fees. Mediators volunteer their preparation time and the first four hours of the mediation session. If the mediation session exceeds four hours, the mediator may either continue to volunteer his or her time or give the parties the option of concluding the procedure or paying the mediator for additional time at an hourly rate of $150. The mediation session continues only if all parties and the mediator agree.

Program administration

Administrative matters related to mediation are managed by the director, deputy director, and administrative assistant of the court's Office of ADR Programs. Their duties include recruiting and training mediators, assigning mediators to cases, assisting mediators with ethical or procedural issues, debriefing mediators after their sessions, and reviewing requests to excuse clients from requirements to attend in person. The court's case systems administrators docket all ADR events and assist with tracking cases and following up with neutrals.

Early Neutral Evaluation in California Northern

Overview

Description and authorization. In 1985, the Northern District of California created the concept and practice of early neutral evaluation through a small experimental project authorized by general order. The program was expanded in 1988 to include a larger portion of the caseload. Eligible cases include tort and contract cases, employment civil rights cases, property rights cases (e.g., patent and trademark), antitrust and RICO cases, cases involving securities or commodities, and other cases designated by the assigned judge or not eligible for the court's arbitration program or assigned to the Multi-Option Program. Before the court's adoption on July 1, 1993, of its Multi-Option Program, all even-numbered eligible cases were automatically referred to early neutral evaluation. Under the Multi-Option Program, however, civil cases of the four participating judges are now exempt from automatic referral to ENE but may select it as their preferred ADR option. Eligible cases on other judges' dockets remain subject to automatic referral to ENE.

In the ENE program in this district, which is now authorized by ADR Rule 5, an attorney with experience in the subject matter of the case meets with counsel and parties for

both sides at an early stage in the litigation. After each side presents its position, the evaluator assists the parties in clarifying issues and assessing the strengths and weaknesses of the case. The evaluator may provide a nonbinding case assessment and, if asked by the parties, will help develop a discovery plan or will assist with settlement negotiations. The evaluator may also schedule follow-up sessions. The rules of evidence do not apply, and there is no formal examination of witnesses. Evaluators are not paid for their preparation time and the first four hours of ENE session time. If additional time is needed, the evaluator may continue to volunteer his or her time or give the parties the option of concluding the session or paying the evaluator for additional time at the hourly rate of $150.

Number of cases. Between January and September 1994, 138 cases were referred to ENE under ADR Rule 5. An additional 74 cases were referred to ENE under the Multi-Option Program.

Case selection

Eligibility of cases. Cases that may be automatically ordered to ENE include contract and tort cases, employment civil rights cases, property rights cases (e.g., patent and trademark), antitrust and RICO cases, and cases involving securities or commodities. Judges may designate cases in other subject matter categories if qualified evaluators are available. Cases eligible for the arbitration program are not automatically referred to ENE but may be referred on stipulation of the parties.

In addition to the cases assigned to the Multi-Option Program judges and to arbitration, cases not automatically referred to ENE include class actions, cases in which the principal relief sought is injunctive, and cases in which one or more parties is pro se. Cases in which a declaratory judgment only is sought may not be automatically referred when the only parties to the action are insurance carriers, sureties, or bonding companies.

Referral method. Upon filing or notice of removal, and subject to the availability of qualified evaluators, the court designates for ENE every even-numbered case that meets the eligibility criteria of ADR Rule 5 and is not subject to the Multi-Option Program. On motion of a party or sua sponte, a judge may refer other cases to ENE as well. When a case is designated for ENE at filing, the clerk's office sends an Order Re Court Procedures to the plaintiff's counsel, who provides the defendant with a copy of the notice within ten days of receiving it or when the defendant is served.

Opt-out or removal. A party who believes an extraordinary circumstance makes participation in ENE unfair may petition the assigned judge for relief within ten days of receiving notice that the case has been designated for ENE.

Scheduling

Referral. For cases meeting the eligibility criteria for ENE, automatic referral occurs at filing. For other cases, referral may occur later if the court so orders, if all parties agree, or if one party requests ENE.

Written submissions. No later than ten days before the evaluation session, each party must submit directly to the evaluator and serve on all other parties a written evaluation statement. The statement must (1) identify the people with decision-making authority, including counsel, who will attend the session, (2) describe the substance of the suit, (3) address whether there are legal or factual issues whose early disposition might reduce

the scope of the dispute or contribute to settlement, (4) identify the discovery that promises to contribute most to meaningful settlement negotiations, and (5) describe the history and status of settlement negotiations. Parties must attach to these statements copies of documents out of which the suit arose (e.g., contracts and medical reports). ADR Rule 5 sets out additional requirements for statements submitted in patent, copyright, and trademark cases. Parties' statements are not filed, and the assigned judge does not have access to them.

ENE session. In cases automatically referred to ENE when filed, the ENE session is held within 150 days of the filing of the complaint or notice of removal, or within 45 days of the clerk's issuance of a notice appointing an evaluator. In cases referred through the Multi-Option Program, the ENE session is held within 90 days of the initial case management conference or issuance of the case management order, whichever comes first. In cases not in the Multi-Option Program that are referred to ENE sometime after filing, the court fixes the time frame for the ENE session. Requests to extend deadlines must be by motion to the assigned judge at least 15 days before the session is held. Within the time frames set by the court, the evaluator sets the date and place for the evaluation session. Sessions are held in a neutral location, such as the evaluator's office or the courthouse. The evaluator also holds a telephone conference with counsel to discuss scheduling, procedures to be followed, and attendance of parties.

Number and length of sessions. The number and length of sessions varies by case. A study of the ENE program showed that 30% of the sessions last no more than two hours. Another 40% last from two to four hours, 20% from four to six hours, and 10% more than six hours. In 20% of the cases, more than one session was held. (See Evaluation.)

Program features

Discovery and motions. The court and evaluators may not schedule ENE events to interfere with the management of the case by the assigned judge. Agreements made in the ENE session may not impose duties or fix schedules inconsistent with orders issued by the judge. A party may not seek to avoid or postpone any obligation imposed by the judge on any ground related to the ENE program. To seek relief from any deadlines, a party must file a motion with the assigned judge.

Party roles and sanctions. The parties and the attorney primarily responsible for the case must attend the ENE session. If the party is a corporation or insurance company, it must be represented by a person other than outside counsel who has authority to settle and is knowledgeable about the facts of the case. A party that is a unit of government must send someone knowledgeable about the case and the government's position and who has, to the greatest extent possible, authority to settle. Attendance is excused only by writing to the ADR magistrate judge at least fifteen days before the ENE session and only on a showing of an extraordinary or unjust hardship. Parties excused from attending must participate by telephone. Evaluators must promptly report any violations of ADR Rule 5 to the ADR magistrate judge, who may impose sanctions as necessary.

Outcome. Within ten days of the close of each ENE session, the evaluator must report to the ADR office whether any follow-up is scheduled, whether the case settled in whole or in part, and any stipulations the parties agree may be disclosed.

Confidentiality. The parties' written evaluation reports are not filed with the court, and the assigned judge does not have access to them. All written or oral communications made in the ENE process are confidential and are protected by Fed. R. Evid. 408

and Fed. R. Civ. P. 68. Communications made in the ENE process may not be disclosed to anyone not involved in the litigation and may not be used, including for impeachment purposes, in any pending or future litigation in this court. There may be no communication about the case or the ENE process between the evaluators and the judges on the court. The evaluator may ask the parties and all those attending the ENE session to sign a confidentiality agreement.

Neutrals

Qualifications and training. To be selected for the court's ENE roster, an applicant must be a member of a state bar for at least fifteen years and a member of the bar of the court or a faculty member at an accredited law school. Applicants must also have subject matter expertise in one or more categories of cases eligible for the ENE program and have the temperament to listen well, facilitate communication, and, if called on, assist in settlement negotiations.

All evaluators are required to successfully complete the court's ENE training session. The program describes the history and components of the ENE model. Panels of experienced evaluators then discuss their roles in the ENE session, including preparation and opening statements; the parties' case presentations and the evaluator's assessment of the case; settlement discussions; and case planning and follow-up.

Selection for case. The ADR office selects the evaluator from the court's roster of trained ENE neutrals. After determining that no conflict of interest exists, the director notifies the evaluator and counsel of the assignment. Evaluators are assigned on the basis of subject matter expertise so they can effectively assess the positions of the parties and give a meaningful evaluation of the case.

Disqualification. No evaluator may serve in any matter in violation of the standards set forth in 28 U.S.C. § 455. If the evaluator believes that a circumstance covered by section 455(a) exists, the evaluator must disclose this circumstance to all counsel in writing. If a party who believes there is a conflict of interest does not notify the ADR office in writing within ten days of learning the source of the potential conflict, he or she waives the objection.

Immunity. ADR Rule 2 specifies that ENE neutrals perform quasi-judicial functions and are entitled to the immunities and protections accorded such by law.

Fees. Evaluators are not paid for their preparation time or for the first four hours of ENE session time. If the ADR session exceeds four hours, the evaluator may either continue to volunteer his or her time or give the parties the option of concluding the procedure or paying the evaluator for additional time at an hourly rate of $150. The ENE session continues only if all parties and the evaluator agree.

Program administration

Administrative matters related to ENE are managed by the director, deputy director, and administrative assistant of the court's Office of ADR Programs. Their duties include recruiting and training evaluators, assigning evaluators to cases, assisting evaluators with ethical or procedural issues, debriefing evaluators after their sessions, and reviewing requests to excuse parties from attending in person. The case systems administrators in the clerk's office assist by tracking the ENE cases, following up with neutrals, and docketing all ENE events.

Southern District of California

IN BRIEF

Process summary

ADR generally. The Southern District of California authorizes various ADR processes for civil cases, including early neutral evaluation, mediation, nonbinding arbitration, summary jury trial, minitrial, and settlement conferences with judges. As an initial step, litigants in almost all civil cases are required to meet with the assigned magistrate judge shortly after responsive pleadings are filed to discuss their claims and defenses and to try to reach settlement. This initial session is called early neutral evaluation (ENE) in this district. At the conclusion of the ENE conference or at any other time, the assigned district or magistrate judge may refer the case with or without party consent to one of the court's other ADR processes. The court's ADR programs are authorized under the district's CJRA plan, effective January 1, 1992, Local Rules 16.1(c) and 37.1, General Order 394-B, and the court's Arbitration and Mediation Rules. The court is also experimenting with settlement procedures in criminal cases.

Early neutral evaluation (ENE). Litigants in almost all civil cases are required to meet with the assigned magistrate judge shortly after responsive pleadings are filed to discuss the case and to try to reach settlement. See below.

Mediation. If a case is not resolved through the ENE conference, it may be referred to mediation with or without party consent. See below.

Arbitration. If a case is not resolved through the ENE conference, it may be referred to arbitration with or without party consent. See below.

Summary jury trials (SJT). The summary jury trial is authorized by Local Rule 37.1.f. Referrals may be made with or without party consent after a hearing. Eligible cases include trial ready cases in which the potential judgment does not exceed $250,000 and the referring judge believes the case is suited to settlement by this process. This procedure is not used extensively.

Minitrial. The minitrial, which in this district is a nonbinding summary trial held before a magistrate judge who acts as the fact finder, is authorized by Local Rule 37.1.f. Referrals may be made with or without party consent after a hearing. This procedure is not used extensively.

Judicial settlement conferences. Under Local Rule 37.1, mandatory settlement conferences conducted by magistrate judges are held in almost all cases. Party attendance may be required. The judge conducting the settlement conference is disqualified from trying the case unless all parties agree to waive this restriction. In addition, the trial judge may order the parties, before judgment is entered, to participate in a post-verdict settlement conference with a judge other than the trial judge.

Of note

Obligations of counsel. Counsel must be prepared to discuss ADR and settlement with the assigned judge at every case conference.

Evaluation. As one of the ten pilot courts established under the CJRA, the Southern District of California is part of the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Barry Ted Moskowitz, U.S. District Judge, 619-557-5583

IN DEPTH

Early Neutral Evaluation in California Southern

Overview

Description and authorization. The Southern District of California requires litigants in almost every civil case to meet with the assigned magistrate judge supervising discovery for a settlement-oriented conference, or an ENE session, within forty-five days of filing the answer. At the session, attended by counsel and parties, the magistrate judge and parties discuss the claims and defenses and attempt to settle the case. The conference is informal, off the record, privileged, and confidential. If a case does not settle at the conference, the magistrate judge is authorized to refer the case to mediation or arbitration with or without party consent. The ENE program, which is experimental, is authorized under the district's CJRA plan, effective January 1, 1992, General Order 394-B, and Local Rule 16.1.c.

Number of cases. Between January and December 1994, approximately 1,410 cases were referred to ENE.

Case selection

Eligibility of cases. Almost all civil cases are required to participate in an early neutral evaluation session. Social Security appeals and habeas corpus cases are excluded from ENE.

Referral method. All eligible cases are automatically designated for ENE. Parties and counsel receive an order from the magistrate judge hosting the conference notifying them of the time and date of the mandatory ENE conference.

Opt-out or removal. There is no procedure for removing cases from ENE.

Scheduling

Referral. Cases are designated for mandatory ENE when the answer is filed.

Written submissions. No written submissions are required.

ENE session. The ENE conference is generally held within forty-five days of filing the answer. The conference is arranged by court staff and is held at the courthouse.

Number and length of sessions. The ENE conference lasts from thirty minutes to three hours. A second conference may be scheduled if needed.

Program features

Discovery and motions. All other case activities, including discovery, proceed unless stayed by the magistrate judge for cause.

Party roles and sanctions. All counsel and parties with settlement authority must attend the conference. Sanctions may be imposed for unexcused failure to attend.

Outcome. At the conclusion of the conference, an order is entered indicating that the conference was held, noting whether the case settled, and stating whether the case has been referred to mediation or arbitration.

Confidentiality. The ENE conference is privileged and confidential.

Neutrals

Selection for case. The magistrate judge supervising discovery conducts the conference.

Immunity. Magistrate judges are protected by judicial immunity.

Disqualification. The requirements for disqualification are stated in 28 U.S.C. §§ 144 and 455.

Program administration

The process is individually administered by each magistrate judge for cases assigned to that judge.

Mediation in California Southern

Overview

Description and authorization. The Southern District of California offers mediation as one of the ADR options established by its CJRA plan. If a case does not settle at the mandatory ENE conference, the magistrate judge is authorized to refer the case to non-binding mediation. Referral to mediation may be made without party consent, although consensual referrals are preferred. The initial mediation session is generally held within forty-five days of the referral. If no settlement is reached, the case returns to the trial calendar. The mediation program, which is experimental, is authorized by the district's CJRA plan, effective January 1, 1992, General Order 394-B, Local Rule 16.1, and the court's Arbitration and Mediation Rules.

Number of cases. Between January and December 1994, seven cases were referred to mediation.

Case selection

Eligibility of cases. Although all civil cases are eligible, mediation generally is not used in habeas corpus, Social Security, and prisoner cases.

Referral method. The judge may refer a case to mediation with or without party consent. Referral is made on a case-by-case basis after discussion with the parties and at the discretion of the judge hosting the ENE session. Mandatory referral is authorized if the judge believes mediation might result in cost-effective resolution of the lawsuit. Parties may also use the process voluntarily. Once a case is referred, a written order is entered.

Opt-out or removal. The rules do not specify a removal procedure.

Scheduling

Referral. Referral to mediation normally occurs at the conclusion of the mandatory ENE session. Referral may also be made at any other appropriate time in the litigation.

Written submissions. Ten days before the mediation session, each party must submit a statement regarding liability and damages to the mediator and other parties. These statements are not filed with the court.

Mediation session. The mediation hearing is generally held within forty-five days of the referral date. Arrangements for the mediation session are made by the mediator, and the session is held at the mediator's office.

Number and length of sessions. Mediation sessions may last up to a maximum of six hours, and more than one session may be held.

Program features

Discovery and motions. All other case activities, including discovery or motion practice, must go forward during the mediation process.

Party roles and sanctions. Unless excused by the mediator, the parties themselves are required to attend the mediation session with counsel. If the defense of an action is provided by a liability insurance company, a settlement-empowered insurer representative must also attend. Sanctions may be imposed for failure to participate or proceed in good faith.

Outcome. If no settlement results, the mediator must file a statement with the court indicating whether there has been compliance with the settlement and mediation requirements of the rule and that settlement was not reached.

Confidentiality. All proceedings of the mediation conference, including any statement made by any party, attorney, or other participant, are protected and may not be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party is bound by anything done or said at the conference unless a settlement is reached, in which event the settlement agreement must be in writing and is binding on all parties.

Memoranda prepared by the parties or the mediator are not filed with the court or otherwise made available to the court or jury. No comments of the mediator are made available to the trial judge or jury, but the mediator may discuss the action with the judge who has oversight responsibility for the court's ADR and settlement programs.

Neutrals

Qualifications and training. Lawyers admitted in the district with at least five years of practice are eligible to be appointed to the court's roster of mediators and arbitrators. The court does not require or provide training for the neutrals.

Selection for case. The parties select one mediator from the court's roster of mediators and arbitrators. If the parties cannot agree, the assigned district judge or magistrate judge makes the selection. When the court makes the appointment, a mediator with subject matter expertise is selected.

Disqualification. Mediators are disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must disqualify themselves in any action in which they would be required under 28 U.S.C. § 455 to disqualify themselves if they were a justice, judge, or magistrate judge.

Immunity. The court states that mediators have immunity to the extent provided by law.

Fees. Mediators serve without compensation.

Program administration

The process is individually administered by each assigned judge for cases assigned to that judge.

Arbitration in California Southern

Overview

Description and authorization. The Southern District of California offers arbitration

as one of the ADR options established by its CJRA plan. If a case does not settle at the mandatory ENE session, the assigned magistrate judge is authorized to refer the case to nonbinding arbitration. Mandatory referral is authorized when the judge believes arbitration might result in a cost-effective resolution of the lawsuit. Consensual referrals are also permitted. A single arbitrator serves without compensation. If either party rejects the arbitrator's nonbinding award, the case returns to the litigation track without penalty. The district's experimental arbitration program is authorized by the court's CJRA plan, effective January 1, 1992, General Order 394-B, and the court's Arbitration and Mediation Rules. The program is not within the ambit of 28 U.S.C. §§ 651–658.

Number of cases. Between January and September 1994, nine cases were referred to arbitration.

Case selection

Eligibility of cases. All civil cases are eligible for referral to arbitration at the discretion of the assigned judge. No cases are excluded, but as a practical matter, prisoner cases and Social Security cases are not referred to arbitration.

Referral method. Cases may be referred to arbitration with or without the consent of the parties. The standard for referral is whether the judge believes arbitration might result in cost-effective resolution of the lawsuit. Referral is discussed at the mandatory ENE conference held in each case, and an order of referral is entered.

Opt-out or removal. No removal procedure is specified in the rules.

Scheduling

Referral. Cases are generally referred to arbitration at the conclusion of the court's mandatory ENE session.

Discovery and motions. During the period of arbitration referral and hearing, discovery goes forward as usual. Dispositive motions are not ruled on by the court until the arbitration process concludes.

Written submissions. At least ten days before the arbitration hearing, each party must submit to opposing counsel and the arbitrator a prehearing statement listing the issues to be determined and all witnesses and exhibits to be presented at the arbitration hearing. An arbitration brief may also be filed.

Arbitration hearing. The arbitration hearing must be held within forty-five days of the ENE conference, absent a written order of extension from the court. The court's policy is to discourage continuances and extensions. The arbitrator sets the location, time, and date of the arbitration hearing.

Length of hearing. A hearing can last up to six hours.

Program features

Party roles and sanctions. The arbitrator may order the parties or client representatives with settlement authority to attend the arbitration hearing. Sanctions may be imposed for failure to participate in good faith in accordance with the local rules.

Filing of award. The arbitrator issues the award either orally at the end of the hearing or in writing within five days of the hearing. The arbitrator's award is communicated only to the parties and is not included in the court file.

De novo request. Unless the case settles, the action returns to the court's normal trial calendar. Litigants incur no fees or sanctions for rejecting the arbitrator's nonbinding award.

Confidentiality. At the trial of the action, no evidence of the arbitration proceeding or result is admissible. All proceedings, including any statements made by any party, are protected and may not be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party is bound by anything done or said in the arbitration proceeding unless a settlement is reached.

The magistrate judge assigned to the case may obtain the results of the arbitration hearing from the parties or the arbitrator for use in settlement discussions. The arbitrator may also discuss the case with the referring magistrate judge to facilitate settlement.

Neutrals

Qualifications and training. Lawyers admitted to the district with at least five years of practice are eligible for appointment to the court's roster, which is a combined list of both arbitrators and mediators and includes brief professional histories for each. No training is provided for the court's roster of neutrals.

Selection for case. A single arbitrator may be selected by the parties from the court's roster. If the parties fail to agree on a neutral, the selection will be made by the assigned district or magistrate judge. When the court makes the appointment, an arbitrator with subject matter expertise is selected.

Disqualification. An arbitrator is subject to the disqualification rules of 28 U.S.C. § 144 and 28 U.S.C. § 455.

Immunity. The court states that arbitrators have immunity to the extent provided by law.

Fees. The arbitrators provide their services pro bono.

Program administration

All of the ADR processes are administered by the judges on a case-by-case basis. There is no central administration. All issues concerning the rules are referred to the assigned district judges for resolution.

District of Colorado

IN BRIEF

Process summary

ADR generally. In the District of Colorado, Local Rule 53.2 authorizes judges to refer litigants, pursuant to a motion by the judge or stipulation or motion by the parties, to a settlement conference (see below) or other form of ADR. On occasion judges have appointed special masters for settlement purposes, conducted summary jury trials, or referred cases to arbitration proceedings outside the court. In the main, however, the court believes fair settlements are best promoted by active judicial case management rather than through court-based ADR. Alternatives to the judicial process, the court believes, should be pursued by litigants through entities other than the court. The court rejected the recommendation of its CJRA advisory group to establish a court-based ADR program.

Magistrate judge settlement conferences. Under Local Rule 53.2, almost all civil cases are referred to magistrate judges for mandatory settlement conferences. On occasion the judge assigned the case may refer it to another district judge, rather than a magistrate judge, for settlement. A case may be removed from the settlement process if a party shows good cause or the judge orders removal. Cases excluded from referral to settlement conferences include bankruptcy and administrative appeals; habeas corpus proceedings; pro se prisoner cases; forfeiture proceedings; government collection actions; IRS, SEC, EPA, HHS, and other government agency administrative proceedings; actions to enforce or register judgments; and proceedings to enforce or contest summons, subpoenas, and deposition proceedings in civil actions pending in other districts.

The district judge assigned the case makes the settlement conference referral and may do so at any time during the litigation. Some district judges include the settlement conference referral in a general order of reference to a magistrate judge shortly after the case is filed. During the referral, the district judge may stay the action in whole or in part to facilitate settlement.

Before the settlement conference, counsel for each party may be required to submit to the settlement judge a confidential statement, including an estimate of the attorney's fees and other expenses the client is likely to incur if the case goes to trial. Counsel must also provide the statement to their clients.

Generally, the settlement judges use neutral evaluation and mediation techniques, depending on the case and counsel. Very often more than one session is held in a case. The settlement judge does not discuss the case with the referring district judge. All the court's magistrate judges receive mediation training.

Of note

Obligations of counsel. Attorneys are required to discuss ADR options with their clients and with each other and must demonstrate in their case management statement that they have done so. Some judges also require that counsel discuss in their case management statement the suitability of ADR for their case.

For more information

James R. Manspeaker, Clerk of Court, 303-844-3433

District of Connecticut

IN BRIEF

Process summary

Parajudge settlement conferences. In the District of Connecticut, six of the seven active judges and two senior judges use attorneys called parajudges to conduct settlement conferences. A parajudge is an attorney, usually with considerable trial experience, who is either fully or nearly fully retired. A parajudge is usually assigned to one judge and comes to the court regularly—for example, one to three days per week. Two or three

matters are scheduled before a parajudge on a given day. As with judicial settlement conferences, the parties must submit a confidential settlement statement outlining their factual and legal assessments of the case, the history of any settlement negotiations, and their positions regarding settlement. The parajudge reviews these statements and the pleadings if necessary. Parajudges are also on call for conferences that may arise when a bench trial or hearing is being conducted and counsel want a settlement conference but the judge hearing the matter cannot conduct it. The parajudge retains the case for additional conferences if settlement is not achieved at the first conference but is considered possible. When settlement prospects are exhausted, the parajudge notifies the assigned judge, who then places the case in line for a trial assignment.

Summary jury trials (SJT). At the request of the parties, the assigned judge or a magistrate judge has the discretion to conduct a summary jury trial or a minitrial. Counsel present a summary of the case, including evidence, to a jury that has been advised of their function and argue for a resolution in their client's favor. No testimony is permitted, but exhibits may be submitted. After return of the jury's advisory verdict, the parties are encouraged to discuss settlement. The presiding judge facilitates the negotiation.

Private ADR. To seek referral to a private ADR provider, parties must file a Stipulation for Reference to ADR, which must specify (1) the ADR process; (2) its scope (e.g., resolution of the case or only certain specified issues); (3) the ADR provider; (4) the procedures to be completed before the ADR process convenes (e.g., medical examinations); (5) the judicial proceedings to be stayed, if any; (6) whether the ADR outcome will be binding or nonbinding; and (7) the date or dates for filing progress reports and/or completing the ADR process. Attendance at ADR sessions takes precedence over all non-judicially assigned matters, such as depositions. Parties pay the private ADR provider. The clerk of court maintains a file of information submitted by the private ADR organizations approved by the court, which is made available to counsel and parties for selection of an ADR provider. If the case is not resolved through private ADR, the court process is resumed.

Judicial settlement conferences. At the request of a party or sua sponte, the assigned district judge or a magistrate judge may conduct a settlement conference—which, according to the court, is essentially a mediation process. The assigned judge decides when settlement discussions are likely to be most productive. A party's request, either formal or confidential, prompts an immediate conference. Each party must submit a confidential settlement statement outlining its factual and legal assessments of the case, the history of any settlement negotiations, and its settlement position. The parties or representatives with full authority to settle must attend the conference. Attendance is excused in some instances if the individual is immediately available to counsel by telephone.

Special master settlement conferences. Local Rule 28 authorizes settlement conferences before special masters at the request of a party or on court assignment. These conferences are conducted by two attorneys selected by the judge from a panel of volunteers established by the court and composed of attorneys with settlement experience. As in judicially hosted settlement conferences, parties participating in a special master settlement conference must submit a confidential settlement statement outlining their factual and legal assessments of the case, the history of any settlement negotiations, and their position regarding settlement.

Of note

Obligations of counsel. A form attached to the court's ADR brochure must be signed by the attorney and party and filed with the court to certify that they are aware of the court's ADR options.

Information from court. Each party or the party's attorney is given a copy of the court's brochure *Your Day in Court*, which describes the available ADR options, including mediation, early neutral evaluation, summary jury trial, minitrial, and arbitration.

For more information

Kevin F. Rowe, Clerk of Court, 203-773-2140

District of Delaware

IN BRIEF

Process summary

Magistrate judge settlement program. Under the district's CJRA plan, effective December 23, 1991, the court established a settlement program in which the district's magistrate judges conduct settlement conferences, mediations, early neutral evaluations, and arbitrations. The assigned district judge may refer cases on stipulation of the parties or sua sponte without party consent. All civil cases, except prisoner and habeas corpus petitions, are eligible for referral. To date, the program has been used for cases involving contracts, employment discrimination and other civil rights matters, trademark, copyright, patent claims, securities, and environmental matters.

At the initial Rule 16 conference, the assigned district judge discusses settlement options with the parties. If appropriate, the case is referred by the judge's scheduling order to the magistrate judge settlement program. Typically, all other case activities go forward simultaneously, unless a stay of litigation is stipulated to by the parties or ordered by the court.

To select an appropriate process and to discuss timing of the settlement event, the assigned magistrate judge holds a telephone conference with counsel shortly after the order of referral is issued. At least ten days before the settlement event, each party is generally required to submit to the magistrate judge a confidential memorandum or letter limited to fifteen pages describing the party's positions, the case's strengths and weaknesses, and prior settlement efforts, and suggesting how the court can best assist the parties in resolving the case. Critical documents may also be attached. The precise subjects to be addressed in the settlement statement are set forth in the settlement order.

In addition to trial counsel, the parties or client representatives with settlement authority must attend the settlement session. Failure to comply with the attendance requirement may result in an order to show cause. If the settlement session is a mediation or settlement conference, the session is generally scheduled to last all day or approximately eight hours. If the initial session does not result in settlement, the advisability of

follow-up sessions or the use of other forms of ADR are discussed with the litigants and scheduled as appropriate. All settlement proceedings are confidential and may not be recorded without prior consent of all parties and the magistrate judge. Settlement information may not be introduced in other proceedings.

Of note

Obligations of counsel. Attorneys are required to discuss ADR and settlement options with each other and their clients and to demonstrate that they have done so. They must also be prepared to address the case's suitability for ADR and settlement with the assigned district judge.

Plans. Mediation and arbitration are being reviewed by the local rules committee.

Evaluation. As one of the ten pilot districts established by the CJRA, the District of Delaware is included in the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Mary Pat Trostle, U.S. Magistrate Judge, 302-573-6173

District of Columbia

IN BRIEF

Process summary

Mediation. In 1989, the District of Columbia created a voluntary mediation program, which is governed by the court's *Program Procedures for Mediation*. See below.

Early neutral evaluation (ENE). In 1989 the court established an early neutral evaluation program but eliminated it in 1995 because the court's mediation program has proven to be appropriate for most cases referred to ADR. Neutrals with subject-matter expertise continue to be available for ADR assignments in cases in which the judge and/or the parties think the evaluation of an independent expert would help.

Judicial settlement conferences. Individual judges refer cases to magistrate judges for settlement conferences.

Of note

ADR obligations of counsel. Under the district's CJRA plan, counsel face new mandatory obligations to discuss ADR with opposing counsel and to consider whether their case would benefit from ADR. Counsel must also address this issue in their proposed case management statement.

Information from court. The court distributes a brochure to all counsel describing the district's mediation program.

Evaluation. An evaluation of the district's mediation programs has been completed by an outside consultant. The April 1995 unpublished report is entitled *Assessment of the Mediation Program of the U.S. District Court for the District of Columbia.*

For more information

Nancy E. Stanley, Director of Dispute Resolution, 202-273-0657
Michael A. Terry, Deputy Director of Dispute Resolution, 202-273-0657

IN DEPTH

Mediation in the District of Columbia

Overview

Description and authorization. The District Court for the District of Columbia created its voluntary mediation program in 1989. The process is governed by the court's *Program Procedures for Mediation*. All civil cases are eligible, but the majority of those referred are contract, personal injury, or employment discrimination cases, as well as a significant number of cases involving government litigants. Cases are designated for mediation in one of two ways: the judge may recommend that a case enter the program and encourage the parties to consent to the process, or parties themselves may ask the judge to refer the case to mediation. Referrals may be made at any time in the litigation. After a case enters the program, the court appoints a trained mediator who arranges an initial joint session, usually within three weeks of appointment. The mediation may involve one or two sessions or may require a series of meetings over a period of time. The process is nonbinding and is provided pro bono.

Number of cases. Between January and September 1994, approximately 140 cases were referred to mediation.

Case selection

Eligibility of cases. All civil cases are eligible for referral to mediation, although the majority of referrals involve contract, personal injury, or employment discrimination actions. A significant number of cases involving government litigants are also handled by the program. No civil case type is presumed ineligible, but pro se litigants are discouraged from using the process.

Referral method. Referral to mediation requires the consent of all parties and the approval of the assigned judge. The judge may recommend that a case enter the program and encourage the parties to consent to the process, or the parties themselves may ask the judge to refer their case to mediation. The court's ADR staff also assist parties and judges in assessing individual cases for mediation. If the parties consent to referral, the judge enters a referral order.

Opt-out or removal. Since the referral is made only with party consent, no removal or opt-out procedures are necessary.

Scheduling

Referral. Referral to mediation may be made at any time during the litigation.

Written submissions. At least seven days before the first mediation session, each litigant must submit a position paper of ten pages or less to the mediator and each party, outlining key facts and legal issues and describing pending motions. These position papers are not filed with the court.

Mediation session. In the referral order, the referring judge generally establishes a time limit for the duration of the mediation process. The court's ADR staff and media-

tor monitor the process. The mediator schedules the mediation sessions, which are usually held at the courthouse or mediator's office within three weeks of the mediator's appointment.

Number and length of sessions. The initial session usually lasts several hours. In a complex case, there may be as many as five or six sessions, with additional follow-up telephone calls.

Program features

Discovery and motions. The general policy of the court is to require other activities to go forward during ADR, but judges occasionally suspend litigation activities sua sponte or at the request of the parties.

Party roles and sanctions. All parties and their counsel are required to attend the joint mediation sessions. When an institution is a party, the court requires a representative of the institution with settlement authority either to attend or to be readily accessible by telephone. When the party is a government entity, senior government attorneys may attend the session, but efforts must be made to ensure telephone access to an official with settlement authority. Party noncompliance with program procedures may be reported to the ADR staff, who, if necessary, consult the court's compliance judge, a specially designated judge with authority to impose sanctions on uncooperative parties.

Outcome. A copy of the referral order with the notation "settled" or "not settled" is sent to the referring judge after the mediation is concluded.

Confidentiality. The *Program Procedures for Mediation* protect the confidentiality of the mediation process, bind the mediator to guarantee the confidentiality of all information, and shield the assigned judge from all information about the mediation. Contact between the mediator and the assigned judge is prohibited.

Neutrals

Qualifications and training. Each member of the court's roster of mediators is individually invited by the court to be on the roster. In issuing these invitations, the court seeks attorneys who have been in practice for at least ten years, are members of the district's bar, are well respected among the bar, and possess creative problem-solving skills. The mediators must complete a sixteen hour training program offered by the court and are encouraged to attend periodic in-service training sessions.

Selection for case. The court's ADR staff appoints a mediator from the court's roster of trained attorney-mediators. The selection process considers the needs of the case and the litigants. Where subject matter expertise is important, a mediator with the requisite knowledge is appointed.

Disqualification. The court has no written disqualification rules, but its unwritten policy requires the mediators to recuse themselves from cases in which they believe they would have a conflict of interest. The ADR administrators ask the mediators to check for conflicts when the case is assigned and encourage the mediators to recuse themselves when they or their law firm have a current or prior professional affiliation with any party, when they have a close relationship with one or more of the attorneys, or for any other reason that might make their service as a mediator in the particular case inappropriate. A new mediator may be substituted if any party objects to the mediator initially appointed by the program administrators.

Immunity. The U.S. Court of Appeals for the D.C. Circuit recently decided *Wagshal v.*

Foster, 28 F.3d 1249 (D.C. Cir. 1994) (court-appointed mediator or neutral case evaluator has absolute quasi-judicial immunity when performing official duties), which grants case evaluators in the D.C. Superior Court absolute quasi-judicial immunity. *Wagshal*'s application to the U.S. district court mediation program has not been tested.

Fees. The mediators serve without compensation.

Program administration

The mediation program is administered by the court's dispute resolution staff, located in the D.C. Circuit's Office of the Circuit Executive. Program administrators select and help train mediators, assign mediators to cases referred to mediation, monitor the mediators' work, and serve as a resource for mediators and the public when questions arise about the mediation program or about particular cases.

Middle District of Florida

IN BRIEF

Process summary

Arbitration. The Middle District of Florida is one of ten districts authorized by 28 U.S.C. §§ 651–658 to provide mandatory, nonbinding court-annexed arbitration in cases involving monetary claims only of $150,000 or less. See below.

Mediation. Under the district's mediation program, established in 1989, most civil cases are eligible for mandatory referral at the discretion of the assigned judge. See below.

The court's general policy is that cases will not be referred to more than one form of ADR. On occasion, however, referral to both arbitration and mediation is ordered by the assigned judge sua sponte or at the request of the parties.

Judicial settlement conferences. Local Rule 3.05 mandates preliminary pretrial conferences in trial-track cases and permits scheduling of preliminary pretrial conferences in other cases. Settlement possibilities are discussed at these conferences.

Of note

Obligations of counsel. Before the preliminary pretrial conference, counsel are required to discuss ADR and settlement among themselves and in the case management report they submit to the judge.

Information from court. Written descriptions of the court's arbitration and mediation programs are provided to all counsel at the time of referral to ADR.

Evaluation. The court conducted an evaluation of its arbitration program in 1986 and continues to monitor its arbitration and mediation programs. A Federal Judicial Center study of the arbitration program is reported in Barbara Meierhoefer, Court-Annexed Arbitration in Ten District Courts (Federal Judicial Center 1990).

For more information

Susan H. Walsh, Operations Chief, 813-228-2739

IN DEPTH

Arbitration in Florida Middle

Overview

Description and authorization. The Middle District of Florida is one of ten districts authorized by 28 U.S.C. §§ 651–658 to provide mandatory, nonbinding court-annexed arbitration in cases involving money claims only of $150,000 or less. Under the program, which was established in 1984, eligible cases are automatically referred to arbitration shortly after the case is at issue. The arbitration hearing is generally held within 110 days of referral, and three arbitrators usually preside. Parties may also consent to arbitration in any civil case. The program is governed by Chapter 8 of the court's local rules.

Number of cases. Between January and November 1994, approximately 500 cases were referred to arbitration.

Case selection

Eligibility of cases. Eligible cases are those involving monetary claims only of $150,000 or less, exclusive of interest and costs, and with no substantial nonmonetary claims. In addition, if the United States is a party, arbitration is ordered in Miller Act or Federal Tort Claims Act cases within the monetary limit. If the United States is not a party, cases involving money damages of $150,000 or less, exclusive of punitive damages, interest, costs, and attorney fees, are eligible if they arise under the following statutes and rules: 28 U.S.C. § 1331 and the Jones Act; 46 U.S.C. § 688, or FELA; 45 U.S.C. § 51; 28 U.S.C. §§ 1331 or 1332 arising out of a negotiable instrument or a contract; or 28 U.S.C §§ 1332 or 1333 and Fed. R. Civ. P. 9(h) to recover for personal injuries or property damage. Cases that exceed the automatic referral monetary limit may also be mandatorily referred to arbitration on a case-by-case basis if the assigned judge determines that arbitration may promote prompt and just disposition of the case. Parties may also consent to arbitration for any civil case.

Excluded from arbitration are constitutional claims, any case where jurisdiction is based on 28 U.S.C. § 1343, and all other cases not enumerated above.

Referral method. Referral is mandatory and automatic for all eligible cases. The parties are notified of the referral by the clerk within twenty days of issuance. Consensual use of arbitration is also permitted.

Opt-out or removal. A party may request that the case not be designated to arbitration by certifying at filing that damages exceed $150,000. In addition, any civil action may be exempt or withdrawn from arbitration if the presiding judge determines that the case is not suitable for arbitration. Mediation may be substituted for arbitration if the judge determines that the case is better suited to mediation.

Scheduling

Referral. Cases are referred to arbitration within twenty days after the case is at issue.

Discovery and motions. Parties may file pretrial motions and conduct discovery within the time limits specified in the assigned judge's case management order.

Written submissions. At least ten days before the arbitration hearing, each party is required to give every other party a list of witnesses and copies of all exhibits to be used at the hearing. Parties must also file and serve answers to standard interrogatories before a specified date.

Arbitration hearing. The arbitration hearing is held within 110 days of the referral date. Continuance of an arbitration hearing more than 90 days after the designation of the arbitrators is allowed only by order of the court, but it is discouraged. Arbitration hearings are held at the courthouse and are arranged by clerk's office staff.

Length of hearing. On average, arbitration hearings last two to four hours.

Program features

Party roles and sanctions. In addition to counsel, individual parties or authorized representatives of corporate parties must attend the arbitration hearing unless excused in advance by the arbitrators for good cause. The arbitration hearing may proceed without a party, who, after notice, fails to attend, but an award of damages may not be based solely on the absence of a party. The local rules do not address sanctions for noncompliance.

Filing of award. The award is filed with the clerk under seal within ten days of the hearing. No factual findings or conclusions of law are required. The clerk's office dockets the award (leaving out the details of the award), mails a copy to the arbitrators and counsel, seals it, and places it in the case file. If a written demand for trial de novo is filed, the award remains sealed and will be opened only if the court orders. If a timely request for trial de novo is not made, the arbitrator's award is entered as the judgment.

De novo request. A request for trial de novo must be made within thirty days of the filing of the arbitration award. When requesting a trial de novo, the moving party must deposit a sum equal to the arbitrators' fees. The de novo fees are forfeited if the demanding party fails to obtain a judgment in the district court that is more favorable than the arbitration award, exclusive of interest and costs.

Confidentiality. The contents of an arbitration award may not be made known to the judge assigned to the case (1) except as necessary for the court to determine whether to assess costs or attorney's fees under 28 U.S.C. § 655; (2) until the district court has entered final judgment in the action or the action has been otherwise terminated; or (3) except for purposes of preparing the report required by Section 903(b) of the Judicial Improvements and Access to Justice Act.

At the trial de novo the court will not admit any evidence about the arbitration process or the award. Testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence or the Federal Rules of Civil Procedure.

Neutrals

Qualifications and training. An attorney may be certified to serve as an arbitrator if he or she has been a member of the Florida bar for at least five years, is admitted to practice in the district, and has been determined competent to serve as an arbitrator by the chief judge.

Selection for case. Within twenty days of the notice of referral to arbitration, the parties may select three arbitrators from the court's roster of attorney-arbitrators. If the parties do make a selection, the clerk randomly selects a panel of three arbitrators from the roster. Parties may also agree to use fewer than three arbitrators.

Disqualification. Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must disqualify himself or herself in any action in which the neutral would be required to do so if he or she were a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Immunity. The court has not addressed this issue.

Fees. The court sets and pays the fees of $100 per arbitrator per hearing.

Program administration

The clerk's office administers the program. The judge assigned the case addresses case specific issues, and the court as a whole deals with general program issues.

Mediation in Middle Florida

Overview

Description and authorization. The Middle District of Florida established a mandatory mediation program by local rule in 1989. Under Local Rule Chapter 9, referrals are made on a case-by-case basis by the assigned judge, generally late in the litigation after discovery is complete. Almost all civil cases not subject to mandatory arbitration are eligible for compulsory mediation. Consensual referrals are also permitted. A single attorney-mediator, certified and trained in mediation and selected by the parties or the court, presides over the mediation. Parties are required to attend and participate in the mediation session until a settlement is reached or an impasse is declared by the mediator. At the conclusion, the mediator reports the outcome of the process to the presiding judge: that the case settled, adjourned for further mediation at the parties' request, or is at an impasse. Most mediations last from three to five hours. The parties jointly bear the cost of the mediator, whose fees are set by the court at $150 an hour.

Number of cases. Between January and November 1994, approximately 300 cases were referred to mediation.

Case selection

Eligibility of cases. Almost all civil cases are eligible for mediation except cases referred to mandatory arbitration; appeals from rulings of administrative agencies; habeas corpus and/or extraordinary writs; forfeitures of seized property; and bankruptcy appeals.

Referral method. The assigned judge may refer a case to mediation without party consent. Parties may also stipulate to referral to mediation. An order of referral is entered after the judge or parties select mediation.

Opt-out or removal. Any civil action or claim referred to mediation may be exempt or withdrawn from mediation by the presiding judge at any time, before or after reference, if it is determined that the case is not suitable for mediation.

Scheduling

Referral. A referral to mediation may be made at any appropriate time in the litigation.

Written submissions. Each party must submit to the mediator and opposing counsel a brief written summary of the facts and issues in the case. The mediation summary is treated as confidential and is not filed with the court.

Mediation session. The mediation hearing generally occurs late in the litigation after the close of discovery and shortly before trial. The preferred window for mediation is no sooner than forty-five days and not later than ten days before the scheduled trial date. In the mediation referral order, the assigned judge assigns one of the attorneys responsibility for coordinating and scheduling the mediation sessions. The mediation session may be held at the courthouse.

Number and length of sessions. On average, a single mediation session lasts three to five hours.

Program features

Discovery and motions. All other case activities go forward during the mediation referral.

Party roles and sanctions. In addition to counsel, all parties, corporate representatives, and any other claims professionals with full authority to settle are required to attend the mediation conference. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the court.

Outcome. Within five days of the close of the first mediation session, the mediator files a mediation report with the court indicating whether the case settled, whether additional sessions were requested by the parties, or whether the mediator has declared an impasse. If the case settles, lead counsel must notify the court, and judgment is entered.

Confidentiality. All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission. A party is not bound by anything said or done at the conference, unless a settlement is reached.

Neutrals

Qualifications and training. An individual may be certified to serve as a mediator if: (1) he or she is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in that state; or (2) he or she is a retired federal judge; or (3) he or she has been a member of a state bar or the bar of the District of Columbia for at least ten years and is currently admitted to the bar of the district court. In addition, an applicant for certification must have completed a minimum of forty hours in the Florida Circuit Court Mediation Training Course certified by the Florida Supreme Court and must be found competent by the chief judge to perform mediation duties.

The chief judge certifies qualified mediators and is authorized to withdraw the certification of any mediator at any time. Local lists of certified mediators are maintained by each division of the court and made available to counsel and the public on request.

Selection for case. The parties may select a mediator from the court's roster of certified mediators. If the parties cannot agree on a mediator, the assigned judge will make the appointment from the court's roster.

Disqualification. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Immunity. Local rules do not address this issue.

Fees. The mediator is compensated at a rate set by the court, which is currently $150 an hour. The mediator's fees are borne equally by the parties.

Program administration

Case-specific issues are addressed by the judge assigned the case. The court as a whole deals with general program issues.

Northern District of Florida

IN BRIEF

Process summary

Mediation. In April 1995, the Northern District of Florida formally authorized its already existing mediation process. See below.

Of note

Obligations of counsel. Counsel are encouraged to discuss ADR with their clients, but no direct obligation is imposed on them by court rule or otherwise.

Evaluation. As one of the ten comparison courts established by the CJRA, the Northern District of Florida is included in the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Maurice M. Paul, Chief U.S. District Judge, 904-942-8848

IN DEPTH

Mediation in Florida Northern

Overview

Description and authorization. Under Local Rule 16.3, adopted April 1, 1995, the Northern District of Florida formally authorized a voluntary mediation program, codifying the court's existing practice of referring cases to mediation. The court's program provides for a neutral mediator, whose role is to assist parties in identifying interests, to suggest alternatives, to analyze issues, to question perceptions, to conduct private caucuses, and to stimulate negotiations between opposing sides. The mediator does not review or rule on questions of fact or law or render a final decision in the case. Mediators are compensated at a rate set by the court.

Number of cases. The court does not routinely maintain information on the number of cases referred to mediation.

Case selection

Eligibility of cases. Any pending civil case is eligible for referral to mediation. No case types are excluded or assumed inappropriate.

Referral method. Any pending civil case may be referred to mediation by the presiding judge with consent of the parties at any time the judge believes it appropriate. Additionally, the parties may at any time ask the court to submit any pending civil case to mediation.

Opt-out or removal. There is no removal procedure in the rules. It is unlikely that a party would request removal since the court refers only cases in which all parties request mediation or consent to it.

Scheduling

Referral. There is no set time for referring cases to mediation. Some cases are not referred until the final pretrial conference.

Written submissions. The parties are not required to submit any particular material for the mediation conference. The mediators determine what material will be furnished to them and when.

Mediation session. The local rules do not establish a specific time frame for completing mediation; however, it is common practice for the order of referral to set a time limit.

Number and length of sessions. The number and length of the mediation sessions are determined by the mediator on a case-by-case basis.

Program features

Discovery and motions. The court's rule does not specify whether discovery and other case activities are tolled during mediation, but generally discovery is tolled.

Party roles and sanctions. There is no written procedure or rule governing the conduct or responsibilities of the parties to the mediation, nor are there provisions for sanctioning noncompliance with the mediation process.

Outcome. Absent a settlement or consent of the parties, the mediator reports to the presiding judge only whether the case settled, was adjourned for additional sessions, or was terminated because the mediator declared an impasse.

Confidentiality. This subject is not addressed in the local rule.

Neutrals

Qualifications and training. Any person who is certified and in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida is qualified to serve as a mediator.

Selection for case. The mediator is generally selected by agreement of the parties from the list of mediators certified by the Florida Supreme Court. If the parties agree and the court approves, any other person may be a mediator in a specific case.

Disqualification. After reasonable notice and hearing, the presiding judge has the discretion and authority to disqualify any mediator from serving in a particular case. Cause for disqualification may include violation of the standards of professional conduct for mediators established by the Supreme Court of Florida. Additionally, any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and a person must be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Any member of the bar who is certified or selected as a mediator pursuant to the court's rules is not, for that reason alone, disqualified from appearing as counsel in other cases pending in the district.

Immunity. The court reports that this subject is not addressed in the local rules and has not been addressed by the court or the Eleventh Circuit.

Fees. Absent other agreement, mediators are paid equally by the parties at a rate set by the court. Mediators may not accept any other compensation without prior written approval of the court.

Program administration

Each judge administers the mediation process on a case-by-case basis.

Southern District of Florida

IN BRIEF

Process summary

Mediation. In 1993, under Local Rule 16.2 and the district's CJRA plan, the Southern District of Florida established a mandatory mediation program. See below.

Other ADR. Summary jury trials are occasionally used.

Judicial settlement conferences. Mandatory settlement conferences with judges are also authorized and used by the court.

Of note

Obligations of counsel. Attorneys are required to discuss ADR and settlement options with each other and their clients and to demonstrate to the court that they have done so. Counsel must also be prepared to address the case's suitability for ADR with the assigned judge.

For more information

T. G. Cheleotis, Special Assistant to the Court Administrator, 305-536-4053
Carol Cope, Chair, Mediation Committee, 305-235-0248

IN DEPTH

Mediation in Florida Southern

Overview

Description and authorization. Under Local Rule 16.2 and the district's CJRA plan, effective November 21, 1991, the Southern District of Florida established a mandatory mediation program in 1993 for almost all civil cases. Eligible cases are automatically referred by the assigned judge to mediation by pretrial order following the initial, mandatory scheduling conference. A single mediator, selected by the parties from the court's roster of certified mediators or from an outside source, meets with the parties to facilitate settlement by suggesting alternatives, analyzing issues, and conducting private caucuses. The process does not allow for testimony of witnesses, and the mediator does not review or rule on questions of fact or law. Absent other agreement, mediators are paid $150 per hour, shared equally by the parties.

Number of cases. Between January and November 1994, 3,611 civil cases were filed in the district. Those that proceeded to an initial scheduling conference were automatically referred to mediation.

Case selection

Eligibility of cases. All civil cases are eligible for mediation except the following case types, which are exempted by Local Rule 16.2.C: habeas corpus cases; motions to vacate sentences under 28 U.S.C. § 2255; Social Security cases; foreclosure matters; civil forfeiture matters; IRS summons enforcement matters; bankruptcy proceedings; land condemnation cases; default proceedings; student loan cases; VA loan overpayment cases; naturalization proceedings filed as civil actions; cases seeking review of administrative

agency action; statutory impleader actions; Truth-in-Lending Act cases not brought as class actions; Interstate Commerce Act cases; Labor Management Relations Act and ERISA actions seeking recovery for unpaid employee welfare benefits and pension funds; and civil penalty cases. In addition, any case may be exempted by order of the assigned judge.

Referral method. Cases are referred to mandatory mediation after the initial scheduling conference by order of the assigned judge. In addition, any action or claim may be referred to mediation on stipulation of the parties.

Opt-out or removal. Cases may be exempted or withdrawn from mediation by the presiding judge at any time before or after reference if a party applies for removal or if the judge determines for any reason that the case is not suitable for mediation.

Scheduling

Referral. Cases are referred to mediation by court order entered after the initial scheduling conference.

Written submissions. At least ten days before the mediation, all parties must exchange and submit to the mediator brief written summaries of the case, identifying the issues to be resolved.

Mediation session. The mediation hearing must be conducted no later than sixty days before the scheduled trial date. Plaintiff's counsel is responsible for coordinating the mediation date and location. Mediation hearings are generally conducted either at the courthouse or at the neutral's office.

Number and length of sessions. The mediation process usually entails one to three sessions, which last three to ten hours altogether.

Program features

Discovery and motions. Other case activities must go forward during the mediation process.

Party roles and sanctions. In addition to counsel, each party or party representative with full settlement authority is required to attend the mediation session. If insurance is involved, an adjuster must attend with authority to settle up to the policy limits or up to the most recent demand, whichever is lower. Sanctions may be imposed by the court for failure to comply with the attendance requirements or other aspects of the referral order.

Outcome. Within five days of the mediation session, the mediator must file a mediation report stating whether attendance requirements were met and whether the case settled, will continue in mediation with the consent of the parties, or should be removed from mediation because the mediator has declared an impasse. If the parties settle, counsel must inform the court by notice of settlement signed by counsel of record within ten days of the mediation. If the mediation ends in impasse, the case is tried as scheduled.

Confidentiality. All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission. A party is not bound by anything said or done at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding. Absent a settlement, the mediator reports to the

assigned judge only whether the case settled, was adjourned for further mediation by agreement of the parties, or was declared at an impasse by the mediator.

Neutrals

Qualifications and training. Individuals may be certified by the chief judge as court mediators if they have completed at least forty hours of mediation training in the Florida Circuit Court Mediation Course and are either: (1) a former state judge in a court of general jurisdiction and a member of the bar in the state in which he or she presided; (2) a retired federal judge; or (3) an attorney admitted to a state bar or the bar of the District of Columbia for at least ten years and currently admitted to the bar of this court. In exceptional cases, other candidates may be certified as court mediators.

Selection for case. Within fifteen days of the order of referral, the parties must agree on a mediator. If they cannot, the court assigns one. The parties are encouraged to use the court's list of certified mediators, but they may select any individual as mediator. If the court appoints the mediator, the clerk selects one from the court's roster through a blind draw.

Disqualification. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Immunity. Florida Statute § 44.10 grants quasi-judicial immunity to mediators receiving referrals from the state courts. The court has indicated that it believes a similar immunity would be found to apply to mediators receiving referrals from the federal district court program.

Fees. Mediators are compensated at the rate of $150 an hour set, by standing order of the court, unless the parties and the mediator agree in writing to a different rate. Absent other agreement by the parties, the mediator's fees are shared equally by the parties. Mediators certified by the court are also required to accept at least two mediation assignments a year for a lesser fee or no fee.

Program administration

There is no overall court administration of the mediation program. The clerk's office maintains a list of certified mediators. The parties are responsible for all other aspects of the mediation referral.

Middle District of Georgia

IN BRIEF

Process summary

Arbitration. The Middle District of Georgia is one of ten courts authorized by 28 U.S.C. §§ 651–658 to provide voluntary, nonbinding court-annexed arbitration. See below.

Mediation. One district judge frequently asks parties in complicated civil cases to consider private mediation and provides them with information on private mediation

firms that handle referrals from the court. If the parties agree to mediate, they make all arrangements and pay all fees. A referral to private mediation may be made at any time in the case.

Of note

Information from court. All counsel in cases referred to arbitration are mailed a copy of the *Arbitration Handout*.

Plans. The court is considering an amendment to the local rules proposed by the court's Rules Committee to expand arbitration to all civil cases.

Evaluation. A Federal Judicial Center study of the first year of the court's voluntary arbitration program is reported in David Rauma & Carol Krafka, Voluntary Arbitration in Eight Federal District Courts: An Evaluation (Federal Judicial Center 1994).

For more information

Gregory J. Leonard, Clerk of Court, 912-752-3497
Mary Rowe, Arbitration Clerk, 912-752-3497

IN DEPTH

Arbitration in Georgia Middle

Overview

Description and authorization. The Middle District of Georgia is one of ten courts authorized by 28 U.S.C. §§ 651–658 to establish a voluntary, nonbinding court-annexed arbitration program. The program, which was implemented in 1991 under Local Rule 11 and is experimental, applies to contract, tort, and other specified civil cases seeking damages of $150,000 or less. This court is one of four districts (see also D. Ariz., W.D. Pa., and N.D. Ohio) in which all eligible cases are automatically referred to arbitration, but any party is permitted to opt out of the referral for any reason within a designated time period. If the parties agree to arbitrate, an attorney-arbitrator from the court's roster presides over a three-to-four-hour hearing held in a courtroom and renders a decision on the merits of the case. Judgment is entered on the arbitrator's award if a demand for trial de novo is not filed within thirty days. The arbitrator is paid by the court.

Number of cases. Between January and September 1994, 132 cases were referred to arbitration.

Case selection

Eligibility of cases. Local Rule 11.3 enumerates categories of eligible cases, generally including contract and tort cases seeking money damages of $150,000 or less, exclusive of punitive damages, interest, costs, and attorney's fees. If the United States is a party, claims within the monetary limit and brought under the Miller Act or the Federal Tort Claims Act are eligible for referral. Other kinds of cases involving the United States may also be referred to arbitration if permitted by regulation. Other civil cases within the monetary limit are eligible for referral to arbitration if brought pursuant to (1) 28 U.S.C. § 1331 and the Jones Act, 46 U.S.C. § 688 or the FELA Act, or 45 U.S.C. § 51; (2) 28 U.S.C. §§ 1332 or 1333 arising out of a negotiable instrument or contract; or (3) 28 U.S.C. §§ 1332 or 1333

and Rule 9(h) of the Federal Rules of Civil Procedure to recover for personal injuries or property damage. Additionally, parties may consent to arbitration in any other kind of matter. Excluded from the arbitration program are claims of constitutional violations or claims where jurisdiction is based on 28 U.S.C. § 1343.

Referral method. All eligible cases are automatically referred to arbitration within twenty days of being notified of the answer by the clerk of court. If a motion to dismiss is filed in lieu of an answer, the arbitration referral is deferred pending decision of the motion.

Opt-out or removal. Within twenty days of receiving the referral notice, either party may opt out of the arbitration program for any reason by filing a written notice with the clerk of court.

Scheduling

Referral. Within twenty days of the filing of the answer, the clerk of court notifies parties in eligible cases that their case has been referred to arbitration. If a motion to dismiss has been filed in lieu of an answer, the case is referred to arbitration after the motion to dismiss has been decided.

Discovery and motions. An arbitration referral does not interfere with the normal progression of discovery or other case management events.

Written submissions. At least ten days before the arbitration hearing, parties exchange lists of witnesses, along with copies or photographs of all exhibits to be offered at the hearing. The arbitrator may refuse to consider witnesses and exhibits not so disclosed.

Arbitration hearing. The parties and the arbitrator determine a mutually convenient date for the arbitration hearing, which must be completed within ninety days of selecting the arbitrator (which is usually within forty days of filing the answer). The arbitration hearing is held at the courthouse.

Length of hearing. The hearing usually lasts three to four hours.

Program features

Party roles and sanctions. In addition to counsel, individual parties or authorized representatives of corporate parties must attend the arbitration hearing. Local Rule 11 does not specify whether or what type of sanctions might be imposed for failure to comply with the attendance and other requirements.

Filing of award. Within ten days of the arbitration hearing, the arbitrator files the award with the clerk, who then mails the decision to all the parties. The award remains sealed until the period for requesting a trial de novo expires. The award becomes the final judgment if such a request is not made.

De novo request. A request for trial de novo must be made within thirty days of the arbitrator's decision. No bond is required and no fees or sanctions are incurred if the requesting party does not improve on the arbitration award at trial.

Confidentiality. The contents of the arbitration award are shielded from the assigned judge (1) except as necessary for the court to determine whether to assess costs or attorneys' fees under 28 U.S.C. § 655; (2) until the district court has entered a final judgment in the action or the action is otherwise terminated; and (3) except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act. At trial de novo, the court will not admit any evidence about the arbitration process or award.

Neutrals

Qualifications and training. An attorney appointed to the court's roster must be a member of the state bar for at least ten years; admitted to practice in this court or any other U.S. district court; and determined by the chief judge to be competent to perform the duties of an arbitrator. No training in arbitration is required by the court.

Selection for case. The court selects three potential arbitrators from its roster of approved attorney-arbitrators and mails the names to the parties. Each party may strike one name, and the remaining name becomes the arbitrator in the case.

Disqualification. Any person selected as an arbitrator may be disqualified for bias or prejudice as provided by 28 U.S.C. § 144 and must disqualify himself or herself in any action in which he or she would do so if serving as a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Immunity. This issue is not addressed in the local rule.

Fees. Depending on availability of funds, arbitrators are compensated by the court at a rate set by the chief judge by standing order. The current rate is $250 per day. If parties agree to arbitrate cases outside the program's eligibility guidelines, the parties pay the costs of the arbitrators themselves.

Program administration

The arbitration program is administered by the clerk's office. Problems that cannot be resolved by the clerk are referred to the chief judge.

Northern District of Georgia

IN BRIEF

Process summary

Arbitration. The Northern District of Georgia authorized a mandatory, nonbinding court-annexed arbitration program in its CJRA plan, effective December 31, 1991. Current law authorizing mandatory arbitration programs in federal district courts (28 U.S.C. §§ 651–658) does not include this district, and therefore the Northern District of Georgia will not implement an arbitration program until it receives funding and statutory authority.

Special masters program. Also authorized under the court's CJRA plan is a voluntary program that would permit parties in complex cases to refer cases to a special master for discovery management and trial. The rulings and findings of the special master would be binding on the parties and reversible by the court only if clearly erroneous. The court is seeking government funding to pay the special masters and will not implement the program until funds are available.

Other court ADR. Several judges use ADR processes on a case-by-case basis. One judge is experimenting with early neutral evaluation. Another has referred a case to a minitrial conducted by a magistrate judge, who rendered an advisory opinion after an abbreviated hearing. Special masters, paid by the parties, have also been used in complex cases.

Private ADR. A number of the court's judges recommend the use of private mediation

or arbitration in appropriate cases. A variety of civil cases, including ERISA cases, have been referred with party consent to private arbitration programs in the community. Mediation is recommended generally in complex civil cases, and referral is based on party consent. If the parties consent to private ADR, the parties select a neutral, make all arrangements, and pay the neutral's fee.

Of note

Obligations of counsel. Under Local Rule 235-2, counsel are required to discuss settlement twice, first before the start of discovery and again within ten days of the close of discovery. Parties with settlement authority are required to attend the later conference with counsel. If settlement does not result, counsel must report the status of settlement negotiations to the court in their pretrial statement.

Plans. See above for discussion of planned arbitration and special master programs.

Evaluation. As one of the ten pilot courts established under the CJRA, the Northern District of Georgia is part of the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Jeanne J. Bowden, Special Assistant, 404-331-0956
Luther D. Thomas, Clerk of Court, 404-331-6485

Southern District of Georgia

IN BRIEF

Process summary

ADR generally. In the Southern District of Georgia, Local Rule 3.3, which became effective September 1, 1994, requires counsel at the beginning of each case to advise their clients of the availability of mediation, binding arbitration, nonbinding arbitration, and assignment of the case to a magistrate judge. To ensure that counsel have done so and that the parties give full consent to participation in ADR, the court requires counsel for each party to file with the clerk and to send to opposing counsel a form entitled *Notice of Case Management Procedures (Litigant's Bill of Rights)*. On the form, counsel must certify that the ADR options have been explained to the client and must state whether the client is interested in using an alternative procedure. Counsel for plaintiffs must file the form within fifteen days of filing the complaint; counsel for defendants must file the form with their answer. The court sua sponte, or on motion by counsel, can provide assistance in setting up ADR procedures appropriate for the case. Cases exempted by Local Rule 16.1 scheduling requirements are also exempted from ADR requirements (Social Security cases, habeas corpus cases, bankruptcy proceedings, condemnation cases not involving real property, mortgage and foreclosure cases, government collection actions, actions to enforce or register judgments, civil forfeiture actions, cases that will clearly be transferred to multidistrict litigation, and claims for relief under maritime or admiralty jurisdiction).

Judicial settlement conferences. District and magistrate judges regularly require settlement conferences as part of status and pretrial conferences conducted pursuant to Local Rules 16.2 and 16.5. Local Rule 16.5 specifically provides that at the pretrial conference the court may require a party or its representative with settlement authority to be present or available by telephone to consider settlement options.

Of note

Obligations of counsel. See ADR generally above.

For more information

B. Avant Edenfield, Chief U.S. District Judge, 912-652-4080

District of Guam

IN BRIEF

Process summary

Judicial settlement conferences. Under its CJRA plan adopted November 29, 1993, and local rules adopted in September 1994, the District of Guam has authorized the use of optional or voluntary settlement conferences in all civil cases. In this one-judge court, parties may request a settlement conference with a visiting judge or the assigned trial judge. If the conference is held before the trial judge, a written stipulation must be filed by all counsel consenting to the trial judge's settlement role. When a visiting judge presides, the assigned judge and the visiting judge are prohibited from discussing the case. The visiting judge is authorized to report only that the settlement conference has taken place. Participating counsel must be authorized by their clients to participate in settlement negotiations. By court order, the party or party representative also may be required to attend the settlement conference. Between January and September 1994, three cases participated in settlement conferences.

Of note

Obligations of counsel. Counsel must discuss with each other whether the case will be submitted to a settlement conference and advise the court of their decision.

For more information

Mary L. Moran, Clerk of Court, 671-472-7411
Bridget Ann Keith, Career Law Clerk, 671-472-7292